S. HRG. 103-453

IMPLEMENTATION OF THE CLEAN AIR ACT AMENDMENTS OF 1990

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HEARING

Implementation of the Clean Air Act... BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

SEPTEMBER 23, 1993

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THURSDAY, SEPTEMBER 23, 1993

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room SD-406, Dirksen Senate Office Building, Hon. Max Baucus [chairman of the committee] presiding.

Present: Senators Baucus, Boxer, Simpson, Lautenberg, and Lieberman.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The committee will come to order.

This hearing is an oversight hearing on the Clean Air Act Amendments. I think it is very appropriate that we focus on the act to try to help make it better. I must tell the witnesses and others concerned that it is my understanding that there will be a vote shortly and we'll just have to deal with that when it occurs.

Clean air is something that many of us in the country take for granted but it is no longer something that comes naturally. It is something we have to defend and even restore, and according to a recent survey in Money Magazine, clean air was the third most important concern of the public in choosing a place to live. It was more important to people than good schools, low taxes, and the cost of living.

Today, we will examine how well the Clean Air Act has worked since we revised it 3 years ago.

In 1990, I helped pass the Clean Air Act Amendments. It was sweeping, in some respects revolutionary legislation. It gave the old Clean Air Act new teeth. It instituted a market system to solve one of the most difficult air pollution problems of our time—acid rain. The Clean Air Act Amendments also aimed to force the evolution of clean air technologies and eliminate emission of deadly toxic chemicals into the air.

Since 1990, unfortunately, implementation and congressional oversight have not matched the quality of the legislation. When we passed the law, many of us may have assumed that it would take care of itself. We patted ourselves on the back for a job well-done, I think rightly so, but then simply moved on to the next issue. We forgot that an important part of our job as legislators is making sure that once the law is passed it achieves its goal.

It is time to admit that neither Congress nor the executive branch has done enough to make the 1990 Clean Air Act Amendments work. The previous administration claimed credit for signing the amendments and then ignored its duty to make them a reality. Now that a new administration has taken over, I do not see that it either has made clean air a top priority.

The Clean Air Act is more than words, regulations, or law suits. For people with respiratory and circulatory problems, it is critical to life itself. And new data suggests that particulate pollution causes 50,000 to 60,000 deaths per year. The American Lung Association estimated this spring that 66 percent of Americans live in areas which fail to meet health standards for air quality. This number has risen by nearly 10 percent since 1989.

This hearing will take a tough and honest look at the implementation of the act thus far. I think we will find that we have not done as much as we could have. Whatever the reason why the law hasn't yet lived up to its promise, it is time for us to find out what's broken and fix it. This is neither a time to congratulate ourselves or to point fingers. Perhaps the problem is that Congress was too ambitious and set too many quick deadlines. Perhaps EPA tries too hard to achieve perfection in an imperfect world. Perhaps EPA is just not sufficiently well organized to get the regulations out on time. Perhaps industry still prefers litigation to meeting legal requirements. Perhaps the answer is all the above. Today we can clear the legislative air and then I hope begin to help clear the real air.

I thank our distinguished witnesses for agreeing to appear today and I thank all of you in the audience for coming. I look forward to an enlightening and constructive discussion. And after it is over, I anticipate that we'll be able to do our jobs a little bit better. Thank you very much.

According to the committee rules, Senators are recognized in order of appearance. Senator Boxer is the first to arrive.

Senator Boxer.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. I would say to my colleague if he has a time problem, I would be glad to yield to him.

Senator SIMPSON. I would say to my friend from California that you were very courteous the other day when I was chairing; therefore, you get this one.

Senator BOXER. Thank you, Senator.

Thank you very much, Mr. Chairman, for calling this hearing. It is very nice to see you, Administrator Browner. There is no question in my mind that the issue of clean air is of key importance. What is interesting to me, as we debate health care reform and the President moves it to front and center, what we have to understand is that without clean air, without clean water the health of our people is going to deteriorate and makes our problem even worse. The state of our economy depends on the quality of our air as well. I always say, "If you can't breath, you can't work. If you can't work, you can't pay taxes." It is a vicious cycle. So I, too,

agree with the Chairman that this must be a priority. I know how difficult it is in a time of dwindling resources, but we need to work together.

Mr. Chairman, the air quality issues addressed by the 1990 amendments are of particular interest to me. Certain areas of my home State of California have very serious air quality problems and my people deserve clean air. But I have to also say that California has done more than perhaps any other State in the Nation in this whole area to combat these problems. For many years we've led the Nation in innovative approaches to solving air problems. Indeed, California has served as a model for many Federal air quality programs, including several of those incorporated into the 1990 amendments. In other words, we have been on the cutting edge of these clean air rules and, ironically, it now puts us in a very rough position in dealing with EPA in two areas—the vehicle inspection program and also the stationary source program.

I have a great interest in both of these areas because I served on what was then called the Bay Area Air Pollution Control District. Somebody decided they didn't like that name because it had "pollution" in it, so they changed it to the Air Quality Management District. But we were charged with cleaning up the air both from vehicles and from stationary sources in the Bay Area. So we got out in front. I helped write the law for vehicles maintenance inspection. And I want to make sure that now we don't get into a situation where the EPA is saying "California, we want you to do it exactly like this. You've done it like that, and now we're cutting off your highway funds and we're going to bring this to a crisis."

I really am so pleased that you have this particular meeting today because I know that Secretary Browner brings to the table a real understanding of the particular problems that States are facing. I am looking forward to her comments. I know my people at home in the State legislature, in small businesses, in every aspect are looking forward to her statements which I hope will assure us that we're not going to get to the point where we have sanctions.

And last, I would like to say thank you to President Clinton for nominating Mary Nichols as Assistant Administrator for Clean Air. What a person she is and what experience she brings to this job; we couldn't be in better hands in this Nation.

I would yield back the balance of my time.

Senator BAUCUS. Thank you very much, Senator.

Senator Simpson.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I tell our friend, Senator Boxer, whom I greatly enjoy, it is nice to have her on this committee, that this is very familiar here because Max and I were the last ones standing when we finished the clean air conference.

[Laughter.]

Senator SIMPSON. Now here we are again. Senator Chafee was also with us at 5:30 in the morning. John Dingell was wielding the hammer on the other side and doing it beautifully we thought. And

Max on our side. At 5:30 in the morning there was just the sound of crushed knuckles and skulls.

[Laughter.]

Senator BAUCUS. To put it mildly.

Senator SIMPSON. To put it in a family orientation.

[Laughter.]

Senator SIMPSON. It was tough. It is obviously just the toughest possible thing. And so it is good to see the administrator here, and getting to know her and work with her is a pleasing experience. I commend you and I know that the learning curve is a great arc because it is one of the toughest jobs and you have to deal with the emotion-filled extremists on both sides; and, boy, are they out there on every single issue, every single thing, some chemical is supposed to make you drop dead at a thousand yards versus somebody who is telling you if you put it in your breakfast food it will make you superman.

[Laughter.]

Senator SIMPSON. So, you get to play with that and it is absolutely grotesque to watch. I hope that you will continue to do what you are doing, using common sense. And that is what you assured us all at our hearings. So we do want to work with you.

I thank you for holding the hearing, Mr. Chairman. You have described it well what we did, a far-reaching piece of legislation. The President committed himself to it and then a lot of thoughtful democrats and republicans put it together, and George Mitchell deserves a tremendous amount of credit for holding little sessions day and night off of his office to weed out those who had just come to have press conferences and press releases versus those who really wanted to get something done. And we finally thinned all those folks out.

The job doesn't stop with the enactment; it is the oversight and budget and regulatory activities. I think we should spend more time on EPA's budget. We rush to authorize and often we rush to pass things knowing that they may never see the light of day. There is a lot less of that under the Chairmanship of Senator Baucus. It has just always appalled me that we would just sit here and vote stuff out and we knew it was so goofy that it would never see the light of day, and it never did. So when we finally finished our work on clean air, about 80 percent of the things that Senator Gary Hart had proposed under the Clean Air Act Commission we passed. For 10 years we messed around in it because of the extremists on both sides. It is called stupidity.

Now, under a single administration with a single party to look at it, we won't probably do the micro managing we've done in here, which largely was done so that we wouldn't ever let that EPA administrator get away with anything. Hopefully, we can deconstruct some of that suspicious legislation so that you can function. That is my hope. I'll help do that.

It is easy to pass authorization bills; it is another thing to pay for them. In the small towns of Montana or Wyoming or California, we see money going out. I think last year we had $120 million earmarked for research centers. It would be awfully nice if we could use that to help communities comply with the law. They don't

know what it is; they need an atomic scientist to unravel it. So I think if we focus on that, that will be helpful.

Then acid rain, and we're going to have a hearing on that, Mr. Chairman, and that will be good. I see problems with regard to State public utilities commissions requiring the use of local high sulfur coal. That is going to be another great struggle. Here it comes again. And the act was meant to foster a least cost, maximum flexibility approach. It was not to take care of provincial needs. The States' actions to require the use of local coal flies in the face of the congressional intent. I always make it clear that I represent the largest producing low sulfur coal State in the United States. I do it so that it will take care of the "Well, we know what you're up to."

[Laughter.]

Senator SIMPSON. And so we need to look at it, and I'll look forward to that.

And finally, there is the non-attainment issues, there is the reformulated gasoline issue, the modeling of fugitive dust emissions in the West. That's a very critical thing and that is not done appropriately, it gets all distorted because we have something in the West that people don't understand, it is called wind and it really stirs things up and it causes what is known as dust. I know this is disgusting to talk about——

[Laughter.]

Senator SIMPSON. Nevertheless, it doesn't mean it is all coming out of a coal mine which is sitting out there which was reclaimed in a way which people don't understand and wish it looked worse. I've been through that. So we will have witnesses.

And then, finally, the issue of dual regulation of radionuclides. That has a life span longer than a radionuclide. There isn't a single soul that won't agree that when you're talking about 10 millirems, which is 1 death per 100 whatever standing 3,000 feet away from something, that the issue here is that that's the job of the Nuclear Regulatory Commission. But there is an obsessive group within your agency that believes that a radionuclide is something connected with Hiroshima and the sooner we weed those cats out and do what this conference committee told them to do—this conference committee told them that dual regulation of radionuclides was absurd, but, again, there are some creative staffers here and members who will work the back door, as they have on this issue, forever. We will work the front door. It is called legislating. So I hope we can deal with that.

I look forward to working with you, and I mean that sincerely. And I commend you for your efforts to date in coming up to speed on a very tough job.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Administrator Browner, we look forward to your testimony. Thank you very much for taking the time to come before us. It wasn't too long ago it seems, just after you were confirmed before this committee, I indicated that we would be giving you time to get the agency in order as best you possibly could given the resources that you have and the circumstances that you were working under. This is a time now to go back and review what we've jointly been

able to accomplish and to address whatever problems we have yet to accomplish. So I look forward to your testimony.

STATEMENT OF HON. CAROL M. BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Ms. BROWNER. Thank you, Mr. Chairman, Senator Simpson, Senator Boxer. It is a real pleasure to be here today to testify about the agency's efforts to implement the Clean Air Act Amendments of 1990. Mr. Chairman, I know that you and all of the members of this committee are very proud of the authorship and the bill that was ultimately passed in 1990, and you should be. It was an historic piece of legislation in terms of giving the Environmental Protection Agency the tools to do the job of protecting this country's air.

I want to assure you that my colleagues and I at the Environmental Protection Agency are committed to the full implementation of the Clean Air Act. I believe that in the last 9 months we have made tremendous strides in moving forward with implementation and doing the job that Congress and the American public expect of us. And, we will continue to make those strides.

We also would agree with those who say that the pace of our rulemaking has not kept up with the schedule put forth by Congress. While I have signed 20 final and proposed rules since January—rules designed to protect the stratospheric ozone layer, cut ground level ozone pollution, acid rain, and toxic air pollution—there is still much that remains to be done.

Since Congress passed the Clean Air Act Amendments of 1990, we have issued more than 150 proposed and final rules, and guidance documents. When fully implemented in the year 2005, the amendments will remove an estimated 57 billion pounds of pollution from the air. To date, EPA has proposed or promulgated rules that account for 85 percent of those 57 billion pounds.

In brief, I want to set out the challenges we face in carrying out the 1990 amendments. We must bring clean air to 86 million Americans who live in counties where air pollution in 1991 exceeded healthful levels for at least one of six major pollutants. Ground level ozone, the prime ingredient of smog, is the most widespread and intractable of these pollution problems. It can cause grievous lung functions, other respiratory problems, and may lead to chronic lung disease. Ozone may also damage forests and cause billions of dollars in crop losses annually.

We have several charts that we thought might be helpful to the committee in explaining the challenge we face and what we have achieved. The first chart, the one to the left, is entitled "The Challenge". It sets out some of the significant facts that we are dealing with regarding Clean Air implementation. The first line makes reference to eliminating smog in 96 cities. There are 96 cities across this country that have not attained the ozone air quality standards. There is some good news, however. We believe in 41 of these cities, are now on a path that will enable them to begin the process of redesignation from non-attainment to attainment. So a real advance has been made, although clearly more remains to be done.

We must also cut health risks from toxic air pollution by at least 75 percent. One subset of toxic air pollutants that were evaluated

by the agency may cause 1,200 to 2,600 U.S. cancer deaths each year. They can also cause birth defects and other serious health problems. Air toxic pollution control is something that we take very seriously, and I am going to talk a little bit more specifically about it in a moment.

The act requires that acid rain causing sulfur dioxide emissions be cut roughly in half. Acid rain and its precursor pollutants have caused damaging effects on lakes, streams, high elevation red spruce in the Appalachians, and impaired visibility.

And, we must eliminate, as the final bullet shows, chemical threats to the stratospheric ozone layer, which screens out the ultra-violet radiation that can cause skin cancer and cataracts.

The 1990 amendments provide EPA with a number of effective tools to combat these problems. They also create a massive new workload for EPA, as this second chart illustrates. First of all, over 700 SIPs, State Implementation Plans, have been submitted since November 1990; 120 new permit program submittals are expected beginning later this year and into the future; 34,000 major sources and 350,000 smaller sources will be regulated. In addition, 120 regulations are required by 1995 and many more by the year 2000. More than 90 mandated studies and reports were required in the amendments. These statistics succinctly show you what it is that we are fasing in terms of the workload, the incredible increase in the workload that we have experienced under the act.

The next chart shows the progress that we believe we have achieved. First, in the area of smog, which is so important to so many cities and to so many people, as Senator Boxer mentioned, 14 major final and proposed rules that will cut motor vehicle emissions and help to bring clean air to our Nation's cities. We have issued final rules putting in place an innovative market-based program to protect our lakes, streams, and other resources from acid rain; a set of proposed and final rules to protect the stratospheric ozone layer; soon to be published final rules to reduce toxic air emissions from dry cleaners and coke ovens; and a final rule giving facilities incentives to make early reductions in toxic emissions.

We have also put in place measures to control other pollutants, such as lead, particulate matter, and to protect visibility.

We are all cognizant that despite this tremendous progress and the diligent efforts of the agency, we have not been able to meet all of the Clean Air Act's statutory deadlines. Clearly, one of the reasons for missed deadlines was the extended review process some rules received by the Council on Competitiveness under the previous Administration. I think if there is one thing you should take away from this hearing today, it is that Sally Katzen, the new Administrator of OIRA, and I are sitting here together. We have already begun the process of working together to make sure that the regulatory process moves forward in a timely manner, and, that we can involve the other agencies in the Government in the process, including the White House, and, the Office of Management and Budget. We believe that we will have a streamlined process that will allow us to proceed much more expeditiously than what occurred in some instances during the last administration.

Furthermore, consistent with the Vice President's National Performance Review, internally at the Agency, we have already begun

to take steps to reform our own regulatory development process so that we can get our piece of this done more quickly before we send regulations for review over to OMB.

There are other reasons that EPA has fallen behind in implementing parts of the act. The act set out a very ambitious agenda requiring more than 5 major regulatory actions in the first 2 years. Major programs had to be created from scratch or overhauled; a complicated task. Second, although air program resources have increased significantly, they have not kept pace with the huge workload created by the new law. For example, and I referred to this previously in one of my charts, with respect to just the revision to the number of State Implementation Plans, SIPs, submitted for processing, the numbers more than tripled between 1991 and 1993. However, regional personnel available to process these SIPs, to respond to the States, rose by only 21 percent. Third, many rulemaking efforts have been contentious, with States, environmentalists, and industry putting conflicting pressures upon the Agency. Reaching the degree of consensus necessary to issue these rules and to lay the groundwork for effective implementation has at times been a lengthy process.

As we move forward to fulfill our obligations under the Clean Air Act, there are four major goals and principles that will guide our efforts. First, we have got to build true partnerships with States and local Governments. I have a chart I believe that illustrates some of the things we are already doing with State and local Governments, and I can tell you as a former State agency head that EPA has worked very well with the States to provide them with the information that they need to do their job. One of the beauties of the law as passed is that it allows a State the flexibility to do what is important for that State. But in order to use this flexibility, we have to provide States with the tools. So, building true partnerships between the State and Federal Government has got to be one of our goals.

Second, we have to elimate the adversarial nature of the regulatory process, reaching out to include all who have an interest. As Senator Simpson pointed out, rulemaking can be very contentious. We need to bring people in on the front end, we need to work together to understand each other, and then we need to move forward.

Third, we need to encourage, and we will encourage, pollution prevention and innovative control technologies. We are firm in our conviction that the standards for pollution reduction must protect public health. We are flexible on the ways to achieve those standards. Innovative control technologies, and pollution prevention offer us real opportunities; market-based solutions, such as those that Congress wrote into the acid rain provisions of the Clean Air Act all will hlep us to achieve our goals.

In the non-regulatory arena, we are pursuing innovative programs that encourage companies to reduce voluntarily their emissions of greenhouse gases, including carbon dioxide, methane, and other air pollutants.

The amendments have stimulated incredible demand for pollution control and prevention technologies and in the process have created new business opportunities and jobs in the air pollution

control industry. We have been actively assisting the clean air marketplace by holding national conferences on business opportunities and new technologies as well as by maintaining an innovative technology database. In fact, I am happy to report that for the first time ever, we recently, published with the Department of Commerce a list of all the companies in the United States interested in doing business outside of the United States in the environmental arena. So, building on the skills and the technologies companies have developed, we are working to create markets around the world for American businesses.

Fourth, we will examine the environmental justice questions associated with implementing the Clean Air Act.

Finally, Mr. Chairman, you requested that the Agency rate the performance of the States, the Agency, industry, and Congress. I think, if I understand correctly, you asked that we do this in terms of letter grades. I want to begin by saying that the most important determinant of our success in implementing this act will be the partnerships we build and the processes we put in place. There is many work that remains to be done and a lot of challenges that remain to be met. But at this point in the implementation process, I would grade EPA, States, and industry with a "B", and I would give Congress an "A−". I believe that the law that Congress passed is a strong law, it is designed to protect the public's health, it gives us a number of very important tools, and it was absolutely historic regulations.

Let me explain my grades for EPA, the States, and industry. Let me start with EPA. The Agency has made much progress in implementing the act. People have worked literally around the clock in an effort to meet its deadlines. But, we have also run into some difficulties, obstacles in the regulatory review process under the past administration as well as some of the other problems I have mentioned. In sum, while the results have not been perfect, the Agency has tried hard to implement the act effectively and expeditiously. I am sure that if you went through each of the rules, they would probably get slightly different grades from different people because the Agency has tried to balance conflicting considerations and interests. I believe that B is a fair grade and we would certainly hope to be back here next year saying that we deserve an "A".

As for industry, most companies are committed to doing their part and are working very hard to comply with these very difficult regulations. Some have actively helped us to develop good rules; other companies have not been as helpful, or as diligent. Overall, however, industry is working very hard and I think deserves a "B".

The States are also working hard. Individual States vary with respect to on how quickly and how well they are implementing the act. Sometimes they deal with difficult State legislative bodies that have to put in place the laws so the State agencies can do their job. I think several States deserve to be commended for specific achievements under the Clean Air Act. For example, Rhode Island, Georgia, and Wisconsin are well on their way to submitting solid operating permit programs to EPA on a timely basis, and such efforts should be recognized. The Northeast Ozone Transport Commission has adopted an ambitious strategy to cut motor vehicle pollution.

Senator BAUCUS. I'm sorry, Administrator Browner, could you give me some indication how much time is remaining in your statement because there is a vote commencing and I would like to give Ms. Katzen an opportunity to testify, depending upon how much more time you have.

Ms. BROWNER. One minute. I just want to finish explaining the grades and then I will be done.

Senator BAUCUS. Thank you.

Ms. BROWNER. In addition, Kansas and Missouri have successfully worked to have the Kansas City area redesignated as meeting the ozone standard.

And then finally, as I have said before, Congress. We look forward to continuing to work with this committee, to working with the Congress as we implement this law, to make sure that we are doing everything we can as the environmental agency of this country to protect the public's health and to provide for flexibility in the manner in which we achieve those protections. In the end, I think that is the best way to ensure achieving the protections needed.

Senator BAUCUS. Thank you very much, Ms. Browner.

Ms. Katzen, before hearing your testimony, let me say particularly why this is historic to have someone from OMB to come before the Congress. In the number of years I have been here, it has been very frustrating, frankly, that some of the problems with agencies have been at the doorstep of OMB and, therefore, it is important for us to talk to OMB. And we are very, very appreciative of your attendance here. We look forward to your testimony.

STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Ms. KATZEN. Thank you, Mr. Chairman and members of the committee. I am pleased to be here today with Administrator Browner. My role is a limited, supporting one, and my comments regarding the OMB review of EPA air regulations will be similarly limited and supportive.

This hearing is particularly timely because the President will shortly sign a new executive order which will be the Clinton Administration's statement on regulatory review. I had hoped that it would be available before the hearing, but unfortunately its release has been delayed.

In developing the new executive order, we sought to make a break with the past in certain important respects. Our objective was to restore the legitimacy of centralized review by creating a process for such review that is more efficient and more open to the public. Our goal has been to establish more cooperative and collegial relationships with the agencies in drafting better, more effective regulations, faithful to congressional intent. We are excited and optimistic about the changes that will take place.

To convey how the new executive order will streamline and improve the regulatory process, it may help to summarize some of the principles that are pertinent to the issues that we are discussing today. First, the new executive order will affirm the primacy of the

Federal agencies in the regulatory decision-making process. At the same time, the order will affirm the importance of centralized regulatory review to ensure that proposed regulations are consistent with the President's priorities, do not interfere with the policy or action taken or proposed by another agency, and are consistent with the principles of regulation that will be set forth in the executive order. The order will encourage greater public participation in the regulatory process through advance consultation and consensual-based rulemaking. And, most importantly for present purposes, the new executive order will set out a process by which potential conflicts can be identified and resolved early in the process—before the agency has invested its time and resources.

There are several ways in which the new executive order will help improve the quality of Federal rulemaking and streamline implementation of statutory mandates. One important step relates to an enhanced planning process that encourage agencies to think through their programs and set internal priorities. Enhanced planning will also facilitate the identification of potential conflicts at an early stage, thereby reducing the number of problems at the end of the process.

Another very important component of the new process is greater selectivity in reviewing regulations. Rather than reviewing all proposed rules and final rules, we intend to free up our resources to focus on the areas where we can add the greatest value, topping our experience and expertise in procedures and methodology. This should result in more focused and faster reviews. Under the new executive order, agencies will be asked to identify the significant regulations they are proposing, based on the anticipated economic, social, or legal effects of the regulation, and OIRA will review only those rules that the agencies or OIRA believe are significant. Finally, against the background of charges of abuse by the Competitiveness Council and to promote good government, the new executive order will set forth procedures for strict time limits and for disclosure of communications with outside parties and the agencies.

Administrator Browner has discussed the task assigned to EPA in the 1990 Clean Air Act Amendments. The annual of work to be done was staggering. While much of it has been done, as Administrator Browner indicated, much remains to be done. In recognition of the continuing task EPA faces in carrying forward its regulatory program and because of the Administration's commitment to fulfilling its responsibilities in this area, the Deputy Administrator with the encouragement and support of the Administrator and I have met on several occasions to discuss ways in which we can establish a more effective, collegial, cooperative relationship, and thus expedite review of proposed and final rules.

There have been two elements to our discussions. One is the importance of developing early in the process an indentification of the issues associated with major rules. The second is the need to focus OIRA's regulatory review resources on the most important rulemakings.

In the past, OIRA has tended to focus at the end of the agency's process of developing a proposed or final rule. The agency's rule development process may take two months or even 2 years, requiring a substantial commitment of time and effort by agency staff and

management. Given this substantial commitment, comments from OIRA at the end of the process are not very welcome, regardless of their merit. We believe that we can achieve a more efficient and effective review by pointing out at the beginning of the process the key issues and the analysis that OIRA typically seeks in the course of its review. The effort to encourage early discussions between EPA and OIRA will focus attention on these issues earlier and help avoid last minute problems.

We have also explored various ways of establishing work groups in which we can, again, identify the issues and bring them to resolution. The important component here is agreeing to disagree: knowing when we have two different views and instead of staring at each other across the table, bring the issue to a decision maker where it can be resolved and the staff can contunie working to do the job that needs to be done.

The second element—focusing our regulatory review resources on EPA's significant rulemakings—is equally important. We have been discussing with EPA ways of categorizing the rules that it is working on—the most important, the important, the less important. All of them are obivously important, but our ability to contribute and our ability to be effective reviewers can be maximized by focusing on the significant processing.

We believe that the reforms in the executive order and the new relationship that has been developed between OMB and EPA will enable us to do the job that remains to be done. We look forward to working not only with EPA but with the Congress in helping us achieve our objectives.

Senator BAUCUS. Thank you very much, Ms. Katzen. One good sign that you will do that in fact is that your testimony concluded exactly when I have got to leave.

[Laughter.]

Senator BAUCUS. Thank you very much.

The committee will recess for about 10 minutes.

[Recess.]

Senator BAUCUS. The committee will come to order.

Administrator Browner, when you think back upon the several months this year that you have been Administrator, just reflect with us as to where you see major progress in the Clean Air Act implementation, administration, what you feel good about with respect to the Clean Air Act, where there are significant advances. And as you look at the statute and as you deal with the States and industries and so forth, what is working best as you see it at this point?

Ms. BROWNER. Mr. Chairman, if I might break the question into three parts. First of all, there is the agency rulemaking process. As I look back over the last nine months, I am very proud of the advances we have been able to make quite frankly in the air toxic arena. That has been one of the most difficult areas for the Agency, in part because of the situation, as we discussed, in the prior administration. There is a way in which we almost start in a little bit of a hole when it comes to air toxic.

Senator BAUCUS. What is it about air toxic that makes you feel good, that you like?

Ms. BROWNER. That's what I was going to say. The dry cleaning rule is final; the rule for coke ovens we will sign shortly; and working is proceeding on the HON (Hazard Organic NESHAP). This Administration has been able to move forward and a lot of the work, I have to say was done by my colleagues at EPA in the prior administration and it is very good work. But what we have been able to do in this Administration which couldn't have been done or wasn't done in the last administration is get the rule's and programs out there so that we can start having the implementation. So I would say that the air toxic.

Senator BAUCUS. Besides air toxics, what?

Ms. BROWNER. In terms of the rulemaking——

Senator BAUCUS. Just overall. What you feel best about from an effectiveness point of view as getting the air cleaned up.

Ms. BROWNER. Two areas of achivement involve our work on Air toxic in terms of rulemaking and work with the States. Again, the degree to which we are going to be successful is I believe in direct relationship to our ability to build strong State programs, to build real State partnerships. I think we have done a lot over the last nine months. I think there are many State agencies across the country that will say we have supported them in their efforts, and that is what they needed from us as they deal with State legislatures, and as they seek to educate their citizens. We have been there for them, we have been willing to speak publicly on their behalf as they seek to put in place their programs. The number of States this year that were able to move forward the permitting legislation that they need is, I think, a real achievement.

I would say those are the two major areas of achievements. The final thing I would say, and I mean this very seriously, is with regard to the work we have done with Sally Katzen on the review process. The process has been a problem, I think we would all agree. In drafting the executive order, Sally Katzen and her staff worked very closely with us to understand what our process is, and to understand how they could aid us rather than deter us in our efforts. Both Sally and I took time away from our families to talk to each other for many hours about exactly what would be an effective process between OIRA and EPA. EPA is the number one producer of major rules.

Senator BAUCUS. In a nutshell, what did you conclude?

Ms. BROWNER. We concluded that bringing OIRA and OMB in on the front end, limiting their participation to those rules that are really major or significant so their resources were focused as opposed to spread across a spectrum, would have significant changes in terms of our ability to move in a timely manner. And that is the goal, to move in a timely manner, to meet the statutory deadlines.

Senator BAUCUS. And when you reflect further on the agency and your tenure thus far, what are some of the problems with respect to implementation of the act? Where do you see the most difficult and most glaring problems, deficiencies, either by omission or neglect or whatnot?

Ms. BROWNER. Well, the resource issue is always a very difficult issue for us in the Agency. We went through a budget process over the last nine months that allowed us to do a base review. We went back and literally looked at how we were spending every dime

within the agency to make sure we were spending it for the most appropriate purposes. In building our Fiscal Year 1995 budget submission, we are doing everything we can within to allocate our existing resources to deal with the most pressing problems. It is a challenge. We are capped at an FTE number that makes this more difficult as our responsibilities have grown. This is true, not just in the Air program, Mr. Chairman, but, as you know, there has been another four or five environmental bills passed since the Clean Air Act, all giving responsibilities to the Environmental Protection Agency. Resource management is something that we are constantly dealing with and it does have impacts on our ability to do our job.

I think the challenge, and are we accept, is that within our resources we have to manage them for the best possible gain for the public's health. That has got to be our highest priority.

Senator BAUCUS. You mentioned air toxic as an area of achievement. From my understanding, about 40 regulations were due for toxics on November 1992 but only 1 has been signed. Is that correct?

Ms. BROWNER. That may be the deadline.

Senator BAUCUS. That means 39 have not been signed.

Ms. BROWNER. Except that with the HON Rule which we have proposed—you actually have a chart that explains the HON Rule that I think is very helpful in terms of how the process works. But the HON Rule deals with a significant number of the air toxics. It also deals with a large number of the facilities from which air toxics are generated.

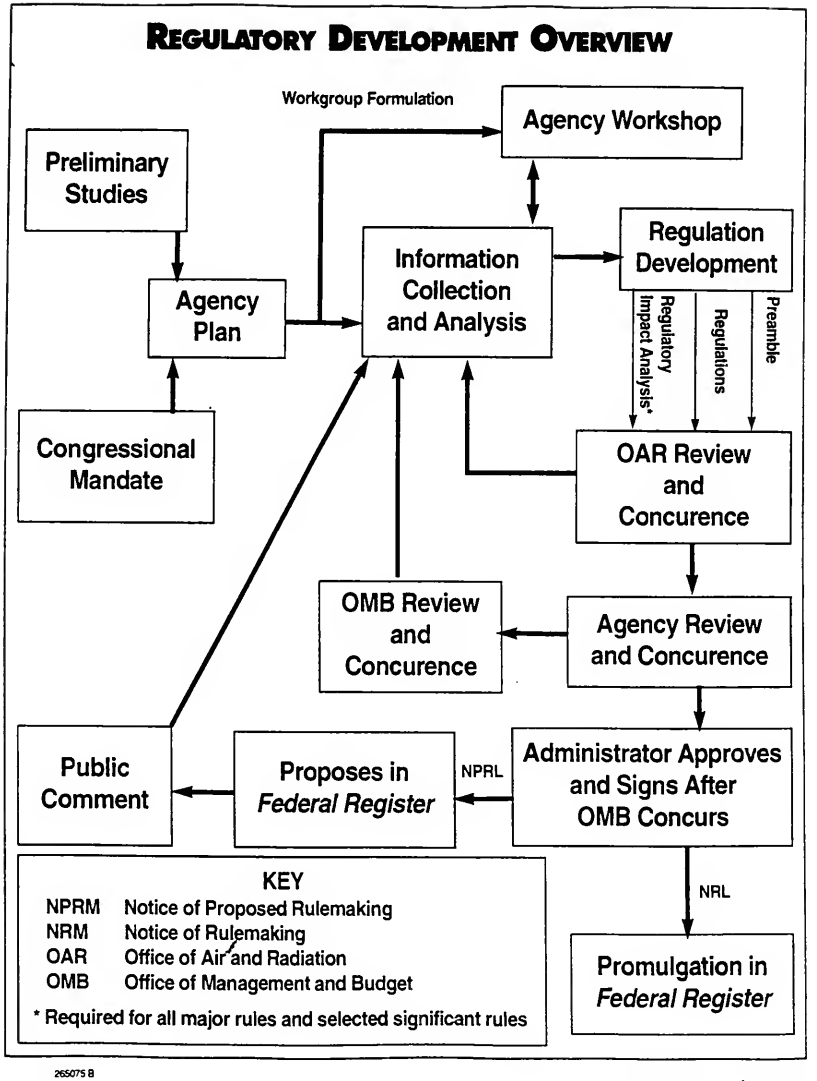
Senator BAUCUS. So when will the HON Rule be finalized?

Ms. BROWNER. In February of next year.

Senator BAUCUS. This coming February?

Ms. BROWNER. Yes.

Senator BAUCUS. There are many who think that the delays in meeting deadlines are caused by a culture in the EPA where there are just too many chiefs and too few Indians; everybody is signing off on virtually everything, most everyone is second-guessed whenever anyone works on a proposed rule, proposed regulation, and it is this perpetual circle, around and around and around. In fact, that chart over there on the left is an attempt to somewhat display that, and that is just a surface demonstration of the problem because that chart does not indicate—arrows should be going both ways perpetually, particularly over on the right-hand side of that chart there.



Source: Environmental Protection Agency

Senator BAUCUS. There are a good number of people inside and outside the EPA, who believe that there is this mindset, there is this culture where you just can't get any decisions reached at EPA. A lot of the problem is the resources, but some think that about half of the problem is this morass, this quagmire, this culture in the EPA where nobody can make a final decision before it's being second-guessed by somebody else and it takes forever before it even gets to OMB. OMB has been the problem in many respects in the past, that's true, but there are many who say that even before it gets to OMB there is this problem in the EPA. I would like you to respond.

Ms. BROWNER. Mr. Chairman, as I said in my testimony, we are committed to changing the internal process. We have been working on changes in the internal process to streamline it. Again, and it is not dissimilar to what Ms. Katzen testified to, across the Agency there is the need for offices to look at rules to make sure that we are being consistent—so the water program people need to be involved in some air rules and the waste people, et cetera.

The point is to have a process that brings those other offices in on the front end rather than waiting until all of the work is done and then inviting participation—on approach that in some instances quite frankly, increased the development time. We absolutely agree that we have to streamline our process in the same way that Ms. Katzen has suggested that the process between EPA and OIRA needs to be streamlined. It is a challenge for us but it is one that we accept and one that quite frankly I think we are making progress on.

Senator BAUCUS. Let's talk about the reformulated gas rule that was due November 1991. Where is it?

Ms. BROWNER. I can't speak to what happened before I came to the agency. If I understand correctly we are under a deadline of December 15, on the reformulated gas.

Senator BAUCUS. Enhanced inspection and maintenance?

Ms. BROWNER. That is a program that States put in place. The States have to pass legislation in many instances. I think we now have 23 States that have in fact passed the legislation to put in place I&M programs.

Senator BAUCUS. What has been the problem there? That was due November 1991.

Ms. BROWNER. Are you talking about the guidance from the agency that was due to the States?

Senator BAUCUS. Yes. Right.

Ms. BROWNER. I don't know what the problem was; it was before I came to the Agency. Those regulations are now available to the States. Since I came to EPA, I have worked with the States to help them in their legislative sessions to get the legislation they need. We had a number of very significant victories this year in terms of States and getting the tools that they need to run the programs.

Senator BAUCUS. What about the general permit rule?

Ms. BROWNER. States?

Senator BAUCUS. Yes.

Ms. BROWNER. Again, that is a program where the States have to adopt legislation for the permit program so they can operate it.

Senator BAUCUS. But they say they haven't been getting guidance from the EPA in a timely manner.

Ms. BROWNER. I can tell you that since I've been here, we have worked very closely with the States. A number of States could testify that, in fact, they have gotten information from EPA and that we have been helpful in dealing with their legislatures.

I was one of the first State agencies when I was in Florida to pass my State legislation. I learned a lot from that experience in terms of what I needed from EPA and what I would have wanted from EPA. I have sought to incorporate that experience into EPA's current relationship with the States. And, again, I think we have had some clear successes. The way to measure success, Mr. Chairman, is look at the States that are now able to pass their legislation and to take on the responsibility to do what they need to do for their citizens.

Senator BAUCUS. What about the 15 percent BOC, the attainment guidelines that the States have to meet, some of the more significant non-attainment areas?

Ms. BROWNER. Right. The States are required to submit their State Implementation Plans for how they will achieve attainment. There were historical problems in terms of the guidance that the Agency prepared for to the States. But, again, I think we have made progress. The guidance is now available to the States and they will be able to submit their plans.

In that particular instance, let me say, that our delay has had an effect on the States and we would agree that we do need to take that into account in terms of the deadlines that the States now have to meet.

Senator BAUCUS. Is the effort to reinvent Government, conducting sort of an organizational review of EPA, to try to streamline EPA's process a little bit more?

Ms. BROWNER. The reinventing Government does include a recommendation regarding the internal rulemaking process at EPA. Actually our work in that area began almost the first day I came to the agency because everyone agreed, the people who have been in the agency a long time and that it was a frustrating process and that we needed to make changes. We are actively undertaking steps to streamline the internal process at EPA so we can get rules through our internal process more quickly.

Senator BAUCUS. And by what date do you expect or hope to have that streamlining in place?

Ms. BROWNER. Well, there are already changes that we are seeking to put in place in terms of how other offices participate in the rulemaking. In terms of a final deadline for the entire change——

Senator BAUCUS. It helps to have benchmarks.

Ms. BROWNER. I agree.

Senator BAUCUS. Data and dates. Some date by which something quantified is intended to be accomplished.

Ms. BROWNER. Right. And that is what we are in the process of going through.

Senator BAUCUS. So what are the dates?

Ms. BROWNER. The dates when we will finally implement the streamlined program?

Senator BAUCUS. Right.

Ms. BROWNER. It would certainly be my hope that by the middle of next year we will have fully changed and streamlined the process.

Senator BAUCUS. And by what amount will the process be streamlined? If one were to quantify it, by what amount will you have achieved reaching your goals, getting these regulations, guidance, everything out on time? Will you be 50 percent there, 100 percent there?

Ms. BROWNER. Are you talking about changing the process?

Senator BAUCUS. Well, there are various ways to approach this. One is by what date do you hope to have in place procedures so that henceforth all deadlines will be met? And then second, by what date do you anticipate to have all the delayed rules, guidelines, and regulations met? And the third question is, by what date do you intend to have the internal procedures changed and by how much so that hopefully in the future you can achieve both goals?

Ms. BROWNER. In terms of changes to streamline the internal process, we are already putting in place some of those changes. It is my hope that by the middle of next year we will have instituted all of the changes.

Senator BAUCUS. Now, by what amount will the reviews be curtailed or the number of people involved reduced or some way to quantify the amount by which there will be an end result? Not just that "We're working on it and by this date we will have it done."

Ms. BROWNER. The procedures——

Senator BAUCUS. We need a quantification somehow.

Ms. BROWNER. Right. The procedures will be changed by the middle of next year. In terms of how we will achieve that success, I think, as Ms. Katzen said, there are significant rules, less significant rules, and minor rules. For a minor rule, the process should be very, very quick. On a significant rule, there is the need to involve more people. We need to take that into account. You can't have one process that works for every type of rule because the complexities vary so greatly.

Senator BAUCUS. I understand. But, again, I need some quantification.

Ms. BROWNER. In terms of a complicated rule, the hope would be to do it in a manner that allows for effective participation but doesn't allow for 10, 20, 30 bites at the apple, if you will, which is what can happen now, both at EPA and then in terms of how the relationship has been historically structured between OMB.

In terms of the deadlines, because you had asked about that, there are two things that happen within EPA—deadlines are missed and courts then order us to meet new deadlines. We are working to do everything we can to make sure that we do not miss any court-imposed deadline, of which we now have over a hundred. We are working to make sure that where a court has said you have to have it done, that we will meet that deadline. It is certainly my hope that in all but a few instances we will achieve that.

Senator BAUCUS. Do you intend that by a certain date you will have procedures in place which will reasonably guarantee to you that EPA will not miss any future deadlines? Is it your goal to have procedures in place that will accomplish that result?

Ms. BROWNER. Absolutely. We do not like missing deadlines.

Senator BAUCUS. By when do you expect to have those procedures in place?

Ms. BROWNER. As part of the streamlining process, we are also looking at due dates that are coming up. We have actually I think provided in writing a list to the committee of all of the dates and what we believe is our ability to achieve the statutory dates and the court-imposed deadlines.

Senator BAUCUS. OK. Thank you. My time has expired.

Senator Boxer?

Senator BOXER. Thank you very much, Mr. Chairman. We do have another vote.

I have one question with two parts but I would urge you to be as specific as you can to help me out as a Senator from a State that, as you know, has some problems with EPA right now. I am not pointing the finger of blame at anyone at all. What my whole approach to this is, is let's negotiate this problem.

So, first, on the question of the stationary source pollution, we have had a program in place for many years on that. Different air districts carry it out. Now EPA has its program in place. And as I understand it, unless a compromise is reached, our businesses will need two permits—one, a State permit, and one, a Federal permit. That is a nightmare, especially from a President who says he wants to work cooperatively and an administrator who has absolutely told us over and over, and I believe you, that you want to work with the States. So we need to have assurances from you that we're not going to have this dual layer for the stationary source permit.

Ms. BROWNER. Senator Boxer, as I understand it——

Senator BOXER. It's title V.

Ms. BROWNER. Yes, it is the title V. It is the permitting program that you are asking about. As in all the other States, the States need to pass legislation, develop a program, we review the program, if we find it to be adequate, then the State manages the permitting of the program. It is absolutely my goal that in all States who seek to take this responsibility that they will achieve that goal, that they will have the responsibility for the permitting program.

Senator BOXER. Well, you're missing it. We have been doing it. As a matter of fact, California was the model for us when we passed the 1990 Clean Air Act Amendments. We are doing it. And now, if you don't act quickly to resolve this—I'm alerting you to this problem—as I understand it, by November we are going to now have a circumstance where our dry cleaning small business people will have to get a Federal permit and will have to get a State permit. That is a living nightmare.

Ms. BROWNER. That is not something that we look forward to either. We do not want to see that happen. We have met as recently as yesterday with the State of California. We are engaged in a dialog to do everything we can to avoid this situation.

Senator BOXER. OK. Well let me tell you that I would be very happy to be involved in these negotiations personally because this is going to set us back. We are in a deep recession and we can't have these dual permitting situations.

My final question has to do with vehicle inspection and maintenance. I am very strongly for the best possible program. I need your assurance that, again, we are going to avert these sanctions and cutting off of money and all this back and forth. Are you willing to be flexible? I know that you do have a good idea of how to do it. You have your car checked in one place and you get it fixed in another. California does it all in one place. I have every reason to believe that your plan is a better plan. On the other hand, there are some new ideas coming out of California, again, some cutting edge ideas. Will you give me the assurances that you will work with us so that we will avoid this nightmare of threats and counter-threats and all that?

Ms. BROWNER. We are absolutely willing to work with you. I have spoken to the leadership in the California legislature of that we may work together to develop a solution that protects the public's health and provides flexibility in terms of the actual process. We have indicated that to the people who would be responsible for moving a legislative package through the legislature. We will absolutely work with them.

If I could say one other thing, Senator Boxer, the November 15 deadline is a congressionally mandated deadline.

Senator BOXER. That's why I am bringing it up. You, if you believe in this compromise and flexibility and negotiation, have to move quickly with us to solve the problem.

Ms. BROWNER. Right. That's what we've offered the State.

Senator BOXER. I like the dates. I want to be tough. But let's not turn our back on a State that has been in the forefront of every environmental measure, every energy conservation measure that we have even copied. Let's not bring this to that point. That's right, I don't want to push back the deadline. I want to solve the problem. Who on your staff can I work with? And that's my last question.

Ms. BROWNER. We have a number of people who have been working with the State. Dick Wilson is head of our Mobil Source Program, and with the will of this committee and this body, Mary Nichols when she is confirmed will serve as Assistant Administrator for Air and Radiation.

Senator BOXER. Thank you very much. We will work, as far as I am concerned, as long as it takes to avoid the crisis.

Ms. BROWNER. I might also mention, Senator, our Regional office has been very involved in this effort and I think has provided us with some unportant opportunities for dialog. We are absolutely committed to working with them to see the situation through.

Senator BOXER. All right. Thank you.

Senator BAUCUS. Thank you very much, Senator.

Senator Lautenberg?

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Mr. Chairman, I am sorry that I was late and missed Ms. Browner's testimony. I want to say that from all appearances, and I've been involved with EPA in environmental issues for about 10 years now, I think that things are progressing

more rapidly, more efficiently at EPA than at any time before this year. I commend you and the organization for the hard work you've done.

I would ask, Mr. Chairman, unanimous consent to put my statement in the record.

Senator BAUCUS. Without objection, so ordered.

[Senator Lautenberg's statement follows:]

PREPARED STATEMENT OF SENATOR LAUTENBERG

Mr. Chairman, I commend you and Senator Lieberman for your continuing efforts to oversee implementation of the Clean Air Act. Enactment of the 1990 amendments was a landmark achievement and your leadership was instrumental in its passage.

We're already seeing significant improvement in the air we breathe. In New Jersey, violations of the health standard which protects us from smog have declined from 48 days in 1988 to 19 days this year.

This is largely attributable to programs to reduce the volatility of gasoline and to install vapor recovery systems at gasoline pumps.

Today, we see stories like a recent one in Newsweek magazine, on how clean our air is becoming.

But Mr. Chairman, it's clear we still have more to do. Nineteen days of unhealthy air is still 19 days too many. And increases in miles driven will threaten some of the gains we've made in reducing smog.

So we're going to have to ensure compliance with the Clean Air Act. For New Jersey, which has a long history of controlling emissions from factories, we're going to need Federal support to reduce emissions from automobiles. We need cleaner fuels and cars. I'm concerned that EPA has not been an advocate on behalf of States to implement the so called "California car." And we need an aggressive Ozone Transport Commission, which I helped develop, to control pollution generated in other States.

I look forward to hearing Carol Browner describe her efforts to help States achieve our goal of clean air for all Americans.

Senator LAUTENBERG. Ms. Browner, I am curious about one thing. You saw the recent Newsweek Magazine article, I assume you placed it there——

[Laughter.]

Ms. BROWNER. We should be so lucky.

Senator LAUTENBERG. But in any event, it is a bit too conclusive for me, frankly. I think that we have a long way to go. They talk about the elimination of automobiles that have any emission, forcing southern California to get into a non-emitting mode, and electric cars, et cetera, et cetera. Do you agree with the account or with what I will call the relatively satisfied, if not complacent, attitude reported in that Newsweek article?

Ms. BROWNER. Senator, I think we would all agree, that because of the hard work of this body in passing a tough law, in the work that the agency has been able to do to implement that law, the work of the States and industry, we are seeing real improvements. The air is improving. However, there is much that remains to be done. In order to secure and maintain the improvements to date and to get the future improvements that are going to be important in terms of the public's health, we have to keep up our efforts.

Senator LAUTENBERG. So more restrictions may be necessary, or continued restrictions?

Ms. BROWNER. More regulatory programs, more stringent standards may be necessary.

Senator LAUTENBERG. OK. Can New Jersey achieve its clean air objectives without reduced emissions from automobiles and reductions in pollution from neighboring States?

Ms. BROWNER. It will probably be difficult for New Jersey to achieve everything that they will need to and want to achieve.

Senator LAUTENBERG. I am going to submit the rest of my questions for the record.

Thank you, Ms. Browner. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator.

Senator Lieberman?

Senator LIEBERMAN. Mr. Chairman, I know we have a vote, so I will just say a couple of things briefly. One is to thank you for conducting the hearing and congratulate you on bringing these witnesses. I was thinking that in the world of environmental protection, at least based on past years, bringing together folks from EPA and OMB rivals the Rabin-Arafat handshake at the White House last week.

[Laughter.]

Senator LIEBERMAN. But I gather the relationship is going well, and obviously that is very important in the implementation of the act. I thank you for what you are doing.

Just to echo in one sentence what the Chairman has said, as Chairman of the subcommittee of this committee that monitors implementation of the Clean Air Act, I am also troubled by the pace of implementation. I know that you come to it with a history—that is to say that the agencies represented here have a history, and you have got to move quickly. That's very important to us.

I am going to submit questions to you in writing. I just want to indicate what they are. One has to do with the low emission vehicle program in California and the help that I believe other States, including my own, need in adopting that program. The growing feeling is that without that, we are not going to be able to meet the requirements of the act.

Second question is on this section 507 program, which is a unique program we created here to provide special assistance to small businesses to meet the requirements of the Clean Air Act. The questions go to how aggressively you've been able to do that and whether you think it creates a model that we ought to use in the Clean Water Reauthorization, for instance.

And finally, and this is a brief question, the Clean Air Act did contain provisions designed to prevent accidental releases of toxic and established a chemical safety and hazard investigation board to investigate those incidents, patterned after the National Transportation Safety Board which has been very successful. The previous administration didn't like the whole idea and the members were not appointed, but they still have not been appointed. I just wanted to ask you when will the members of that board be appointed so it can be ready to go to work.

Ms. BROWNER. Very briefly, Mr. Chairman, Senator Lieberman, in terms of the Chemical Safety Board, we have submitted names to the White House and interviews are being conducted. So we take seriously the importance of that board, we think it will play an important role, and we are moving forward in terms of the five appointments.

Second, in terms of the LEV issues that you raise, we do want to assist States. Over the last six months, we have worked with several States—New Jersey, Massachusetts, New York—regarding in their State legislatures and their LEV programs. We are looking forward to working with other States too. Again, we want to respect what States think they need to do in order to achieve the goals of the act and the clean air standards that have been set. We want to make sure that they have the tools that they think will work for them and we wont be supportive.

I would be more than happy to be more specific and detailed on those issues.

Senator LIEBERMAN. Fine. I'll submit those to you in writing. Thank you both very much. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator.

Administrator Browner, we need to take another recess. How much more time do you have this morning?

Ms. BROWNER. Mr. Chairman, I am supposed to be giving a speech at noon. There may be some flexibility. Perhaps we could investigate that.

Senator BAUCUS. Is that close by? How far away?

Ms. BROWNER. At the Mayflower Hotel.

Senator BAUCUS. That's close enough. We will recess for 10 minutes and then have a few questions. We will be right back.

Ms. BROWNER. All right. Thanks.

[Recess.]

Senator BAUCUS. The committee will come back to order.

Ms. Browner, I know you have to leave shortly, so this will be very brief. Essentially, I know that you have inherited some very significant problems at the agency and I know that you are doing your level best to try to straighten that out and put things back into line. I think that we together—EPA, the Congress, the States—are more likely to achieve our goals if we work to do that, obviously; but second, know the dates by which we intend to accomplish certain results, then work to help each other do it. Frankly, I think you have been a very good administrator. You have worked very hard. I think your priorities are correct. You have some constraints that you're operating under. Nevertheless, we have to serve the people—clean up the air. You have this committee's full cooperation in your efforts to reach your objectives; that is, set some new procedures in place so that we do meet these deadlines.

I know also you are trying to adopt some multimedia approaches, particularly in enforcement and other areas.

Ms. BROWNER. Yes.

Senator BAUCUS. That, too, is an objective of this committee. I strongly urge you to spend time talking to us or calling me often rather than too little to help mutually achieve that objective.

I would like you to formally submit to this committee some dates by which you intend to have this process fully revamped so that we can rest fairly well assured that from that date forward the public knows, States know, the industries know, Congress knows, you know that we're going to get these regulations, these rules, these guidelines out on time. Now if that means that we in the Congress are placing too many demands on the agency, we need to know that.

There are a large number of rules and deadlines required by the act. As we all know, that is in part because during that time, the end of the 1980's, the country, generally, I think, and the Congress, certainly, were a little less enamored with the agency's operations and, therefore, indulged, if you will, in fairly prescriptive legislation. Some think that the legislation is too prescriptive; it binds the agency too much, it dictates too much to the agency too many requirements, it does not give the agency enough flexibility to meet changed circumstances and conditions. I tend to think that some of those complaints are warranted. In fact, one example in just the last couple of days that you and I both know of is the MTVE matter with respect to certain States. The present law tied the agency's hands I think too much.

So I just tell you that we have an opportunity to deal with all of this. I also encourage you to work to find more incentives for more environmental technologies, not only remedial but preventive technologies and process technologies, so there is less pollution than we would otherwise have. And, again, the multimedia approach I think is something we have to pursue, and market-based incentives. Look for ways, find ways to tap the resources of the market in addition to command and control.

Your response?

Ms. BROWNER. Thank you, Mr. Chairman. You have my commitment and the American people have my commitment that my colleagues and I at EPA will work expeditiously to implement the law. We take this responsibility very seriously. I have found that my colleagues at EPA are some of the most committed, the most qualified individual in terms of dealing with these complex issues. And, we all agree that a streamlined process will serve our purposes, your purposes, and the people's purpose as well. So, we are committed to doing that and we will provide you with a written explanation of how we see the process changing and when we can expect to see those changes being fully implemented.

We will also provide you with a detailed description of the court-imposed deadlines, what we're doing to meet them, as wll as the statutorily imposed deadlines that are coming up. We don't want to continue in this cycle of not being able to meet statutory deadlines and having the courts impose deadlines.

Finally, in the last 9 months since coming to the agency I believe that we have been able to do an awful lot. If you look at the air toxics area, the two rules that I mentioned previously, the dry cleaning rule and the coke oven rule, but also the HON proposed rule. Those rules will achieve more than 50 percent reduction in the air toxics emissions. Real benefits for the people of this country. Those were all very complicated, very complex rules.

I think the Agency made real efforts to move them prior to this administration but it was not possible. We have been able to do that. They are out there. Two of them will take effect shortly, one will take effect in February. So we are making real progress and we will continue to make progress and work with you in a collegial and cooperative manner to see that the Clean Air Act is fully implemented by the dates that Congress told us to do.

Senator BAUCUS. I will be anxiously looking forward to your formal submission because those dates are going to be important.

And how well you quantify results will also be very important because that is about the only objective criteria that we can go by with respect to the process, let alone all the other matters which we have not yet dealt with in this hearing. Today, we just focused primarily on process to get these regulations, rules, guidelines out on time. OK?

Ms. BROWNER. Thank you.

Senator BAUCUS. Thank you.

Ms. Katzen, a lot of the same questions obviously apply to OMB. Could you just tell us again the amount by which you are going to reduce the review at OMB of EPA rules, regulations?

Ms. KATZEN. Our intent is to be more selective but we have not been looking at it in terms of quantification; we have been looking at it in terms of broad categories; some rulemaking are vary significant, others are significant, and others are important but less significant and there is less value added possible. Our intention is to focus our resources on the more significant and the significant ones.

We have not used numbers because there is termendous variation among the agencies and over-time. This executive order will apply not just to the relationship between OMB and EPA, but between OMB and all of the Executive Branch agencies. Many of those agencies are subject to statutory deadlines; others around. Some are very active now; some are very quiet now, any numbers we use would probably not only be artifical but also not track the activity at the agencies.

We are confident this approach will be more seletive. We have been working on two pilot projects while we were drafting the executive order to see whether this approach would result in a substantial reduction in the number fo rules OMB reviews, and we have seen real change. But to report that one month it could be a 50 percent reduction and another month it could be—and I am spealary now from memory 75 percent, and then the next month it is 25 percent, is not particularly informative to target a specific number is a little bit I think like trying to target to the number of pages in the Federal Register—it doesn't tell the whole story.

Senator BAUCUS. Well, many people would like to see fewer pages in the Federal Register.

Ms. KATZEN. I agree, but you know what they can crowd into tiny type in the Federal Register. We have used the pilots to make sure that there will be a real reduction in OMB's review, and we are exploring ways of being able to verify that.

Senator BAUCUS. OK. But speaking less generally and more specifically with respect to EPA, not other agencies but just EPA, and I focus on EPA because that is the subject of this hearing, and, second, EPA is a little bit different because EPA probably more than any other agency has more rules and regulations that affect people directly, could you give us in layman's terms a sense of what changes you see? That is, if a person were looking at EPA/OMB review in the last several years, compare that with what you intend to be the situation in the next 6 months or a year or whatever. What differences will there be, just for somebody from the outside walking in just trying to get a sense of this?

Ms. KATZEN. What the people will see is greater speed and greater efficiency in OMB's review of EPA's rules. What they will not necessarily see is "see change" in attitude. Administrator Browner spoke of our working relationship. A good working relationship is terribly important to both of us, and we have conveyed to our respective staffs that the ability to work together is essential to this Administration's achievement of its objectives. Administrator Browner has been fabulous in providing leadership at EPA, signaly that OMB is not an entity to shy away from or hold at arms length, but rather to work with in a collegial manner.

The idea of working on issues up front, the idea of resolving issues sooner rather than later these ideas can take hold if there is a change in attitude of the staffs—so that they are working together instead of as adversaries. The public won't see that but they will see the result of the new process, which will be more efficient.

Senator BAUCUS. You mentioned OMB will review most significant and significant only, as I understood you; that is, not review rules that are categorized as not significant. Could you give an example of a rule, a procedure that EPA in the past has sent to OMB that OMB would review in the old regime because it was "not significant" but which the new regime would not review because it is categorized as "significant". Could you give me an example?

Ms. KATZEN. I could supply some examples because we have had at least three meetings where we have looked at what maybe coming to OMB in the next 2, 3, 6 month period, and we have made some cuts as to what is significant and these where there is less room for value added. I know that there were a number of less significant reule makings, although they may have been in the water RCRA, or other programs. The dry cleaning rule, the HON rule that Administrator Browner was describing, those would be characterized as significant and would be reviewed by OMB.

Since January 1993, I think there have been 55–56 rules on which OMB has completed its review. Of those, roughly half of have been cleared since I was confirmed. And among those, I can think of about five or six where at the time we thought that this is an example of something that we would not be renewing in the future because there is not a lot of value added from such review. I can provide you with more details if you wanted that. But they would only be illustrative because to some extent will be implemented it on a case-by-case basis.

Senator BAUCUS. Just your overall sense though, does this mean that 10 percent would not be reviewed that were reviewed in the past, 20 percent, 30 percent, 1 percent? Just your feel.

Ms. KATZEN. I would hope it would be about a third or so.

Senator BAUCUS. About a third?

Ms. KATZEN. That's what I hope.

Senator BAUCUS. Therefore, among the rules, decisions made by the EPA in the past that had heretofore been reviewed by OMB, about two-thirds now will continue to be reviewed, one-third not reviewed. Is that about right?

Ms. KATZEN. I am reluctant to embrace specific numbers because of the variations among the agencies over-time. I know you want to limit it to EPA, but that makes it more difficult because it is a smaller sample. I also know that within the next year or two, with

all the statutory deadlines and court deadlines, that have been imposed, we are going to be seeing many, many more rules from EPA than we would in an ordinary time period.

Our objective is to focus our resources where we can do the most good and not delay the process. If it turns out that we are unable to look at all the ones we think we should look at within those constraints, then we will have to review fewer. This is more of a performance standard than a command and control approach. I am not setting a specific number. I am saying we are going to get the job done. We share Administrator Browner's commitment to implement the Clean Air Act Amendments on time, and that will be ultimately determine what we are able to review.

Senator BAUCUS. In your view, does EPA have sufficient resources to do its job? Is it OMB's view that EPA has sufficient resources to do its job?

Ms. KATZEN. I think that with Administrator Browner's leadership, her emphasis on management, and the work that she will be doing in streamlining the internal EPA review process, we will see substantial improvement. And since we are all dealing with limited resources and recognize the constraints that exist for the entire Government and for each of its components, I believe that she will be able to do the job.

Senator BAUCUS. You believe. Is it OMB's belief that with present resources EPA will be able to put in place procedures that will enable it to not only meet its present deadlines, but future deadlines? Get everything backlogged out on time and have in place a process that will get future requirements out on time.

Ms. KATZEN. I believe that Administrator Browner's confidence in this area is well deserved. I think she can do it.

Senator BAUCUS. So it is OMB's view that it can be done with the present resources?

Ms. KATZEN. It is my impression that she speaks with a great deal of confidence, and I have no reason to disagree with that.

Senator BAUCUS. OK. Any other points you want to make with respect to this whole question? Is there some point that has not yet been raised that you think is relevant and important?

Ms. KATZEN. I think the only other point that I would make is that because of the large number of statutory deadlines and EPA's past inability to meet them, EPA finds itself in a situation where it now not only has upcoming statutory deadlines but also court deadlines which it must meet. Each time there is a court deadline imposed, EPA's ability to manage its regulatory agenda is diminished. We are hopeful that we can reach a point where we can put the past behind us, do what we were supposed to have done, and then begin to focus on the future. That was a point that Administrator Browner had in her written testimony that I thought deserved to be emphasized here.

Senator BAUCUS. As you conduct your review, do you think that Congress was too prescriptive in writing the Clean Air Act Amendments?

Ms. KATZEN. I think the task that was set for EPA was staggering. You were very clear in your statement as to why the legislation was as prescriptive as it was—the concern that Congress had as to whether the past Administration would carry out congression-

al intent. Given that concern, the degree of specificity was more understandable. I hope that with the better relations between the Congress and the new Administration, there would be less reason for such prescriptions in future legislation.

Senator BAUCUS. Yes, it is a very interesting question. Frankly, I am looking for ways to give the agency more flexibility. That means more trust. We have to find ways to engender the trust, build on that trust so that the extension of more flexibility is warranted. I urge you and Administrator Browner to help us to find ways to achieve that goal because in some respects I do think the act is a bit prescriptive. What is important is the precise provisions. I think sometimes with change of circumstances that there are other ways to achieve that same goal more efficiently, not as much cost, better ways. So I just urge you to think about it from that point.

Who decides what rules are significant, which rules are not significant? Is that an OMB decision? Who makes that determination?

Ms. KATZEN. The concept is that the agency has the primary responsibility and will takes the first cut at what is significant. Those decisions would be discussed with OMB. As I noted, we have had a pilot project in place with another agency over the last several months, and we found that as time progressed we clarified our view of what is significant and we better understood the agency's view of what is significant. Each month there seems to be fewer regulationsat issue. We now seem to be speaking from the same script.

I think it will vary among agencies, and that is why I was so pleased and gratified that Administrator Browner encouraged an on-going discussion so that we could reach a better understanding. I foresee agreement on these issues requiring——

Senator BAUCUS. What criteria will OMB use in its review?

Ms. KATZEN. Some of that will be specified in the new executive order, and until the executive order is ready, I probably should not go into detail.

Senator BAUCUS. But off the top of your head though, what are some of the considerations that go into developing those criteria?

Ms. KATZEN. The considerations that go into it are those that justify centralized review. An issue would be sifnificant where an action taken or proposed by one agency may adversely affect the actions taken or proposed by another agency. Coordination among the agencies is one of the functions of centralized review. Significance includes some sense of importance, impact, the kinds of matters that have wide-ranging or enormous dollar effects. When we are talking about a rule that may impose billions of dollars of cost, that sounds significant. As a lawyer, the last refuge of scoundrels—not that all lawyers are scoundrels or all scoundrels are lawyers—is what the Supreme Court has good. Justice Potter Stewart speaking on the defintion of pornography said "I know it when I see it." The same may be true of sefnificant regulations: we may not define them precisely, but we will know them when we see them. We did some test cases on this. We talked with a couple of the agencies, not EPA in this instance, and we had a couple of different regulations, and we asked "Do you consider this significant?" There was a group of people sitting around the table, and all the heads went

in the same direction—whether it was up and down or side to side. When you are working on something, you know if it is significant, and you know the ones that are important but not significant.

Senator BAUCUS. We have to go on to the next panel, but just a couple quick questions. How much more public participation will there be in OMB review process?

Ms. KATZEN. The President is committed to correcting the abuses of the Competitiveness Council and to making the process more open and more accountable. We have already started. Effective July 1st, we began listing in our Public Reference room the date that regulations come to OMB for review. That was an issue that was sorely contested; the last Administration challenged it in court and prevailed in the Wolf case. We have decided that, notwithstanding that the law does not require us to make this information available, it should as a matter of policy be available. So now anyone can go into our Public Reference room and find out the regulations that are under going review.

There is a whole series of procedures like that which will be set out in the new executive order to make the process more open.

Senator BAUCUS. On the other hand, will it make it more lengthy?

Ms. KATZEN. No, because there will also be strict time limits set further in the new executive order. And the fact that people know what we're doing does not necessarily, and, in fact, should not, lead to delays.

Senator BAUCUS. I appreciate your efforts, Ms. Katzen. I think you are off in the right direction. Let's hope it works.

Ms. KATZEN. Thank you very much.

Senator BAUCUS. I look forward to revisiting this issue with you and Administrator Browner probably in about a year from now to see if it is working.

Ms. KATZEN. I look forward to it. Thank you.

Senator BAUCUS. Thank you very much. I appreciate your time.

We now move to the next panel.

First, we have Michael Kahoe, who is appearing on behalf of James Strock. He is Assistant Secretary for Regulatory Improvement for the California Environmental Protection Agency. Mr. Robert Campbell, chairman and CEO of the Sun Oil Company. He is also a member of EPA's Clean Air Advisory Board. Melvin Sherbert who is the owner and operator of an Amoco station in Suitland, Maryland, and president of Service Station Dealers Association of America. Next, Peter Baljet, member of the board of directors, American Lung Association, and chairman of the National Air Conservation Commission. And finally, Dr. Joseph Sullivan, senior vice president, Ciba-Geigy Corporation, a multi-national chemical corporation.

Thank you all for appearing here today. We will begin with Mr. Kahoe.

STATEMENT OF MICHAEL A. KAHOE, ACTING UNDERSECRETARY, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Mr. KAHOE. Mr. Chairman, it is a pleasure to be here this morning on behalf of Secretary Strock. We have submitted Secretary

Strock's testimony for the record that addresses some of the questions that the committee asked before this hearing as well as addressing many of the questions that have come up this morning. So what I want to do is just briefly hit on a few points, some of which actually have already been made.

Let me first start with the whole area of accomplishments. In the case of California, our air is cleaner. There has been significant progress made over the years and this has been done even in the face of significant population growth, which on a long-term basis in our State means 600,000–800,000 new Californians every year.

The past 5 years in our urban areas we have seen the number of days violating the ozone and carbon monoxide standards dropping by 18 and 35 percent, respectively. The South Coast Air District, which has the worst air quality in California, in fact the Nation, the exposure of that population to unhealthy air has, in very rough terms, been cut in half. In the case of the San Francisco Bay Area, our second biggest metropolitan region with over six million people, we are now going through the process of redesignating that as being in attainment of the Federal standards which, as Secretary Browner indicated, is not all that common an event.

We recognize significant further progress is needed. Our other air basins have to reach the Federal standards. Once we reach the Federal standards, we must continue to meet the separate and stricter California standards. And finally, we must continue our efforts that we maintain that progress in the light of future growth.

How have we done this and where is further progress really to come from? I think it really was summed up quite well by Vice President Gore when he spoke at the National Governor's Association in Tulsa and stated, "The program rules and regulations must be fundamentally rethought and their focus changed from compliance to outcomes, from sanctions to incentives." This is a basic concept, a basic model which we feel to a large extent has operated in the past whereby EPA has set the standards, California has been able to craft the solutions that reflect our challenges and our specific circumstances.

These have worked and we hope they will continue to work in developing clean air strategies that meet our conditions. They will also work because by reflecting California's circumstances the public will accept these individual measures that we are asking them to take on. And public acceptability has been a key basis for our program.

Regrettably, we have not seen this type of attitude really presented in types of regulations that we have been seeing coming out of EPA. We have seen them becoming increasingly detailed, increasingly strict as far as laying out specific measures without leaving flexibility to the States.

In the case of air, this concept of State flexibility is of particular importance to California. Senator Boxer indicated the State program has operated for several decades now. In fact, we underwent a major revision of our clean air statute in 1988 prior to the Federal amendments. Much of the Federal Clean Air Act Amendments reflect the California program and, as a result, many of the mandated measures in the act exist in some form already under the State requirements. Federal regulations that allows to build on this

existing structure in a flexible manner, putting in enhancements where needed, means progress will continue in a cost-effective manner.

The Federal regulations that attempt to put out a one size fits all States type of approach means significant costs, in our case in particular, with little intended environmental benefit, whether it means having to go to an existing effectively operating system, ditching it, and replacing it with the Federal model or having to create a duplicate system with its attendant cost both to the State and local agencies, industry, and the consumers.

We feel a much better approach is, first, to ask what is our outcome? The outcome is to clean the air and meet the performance standards of the act.

I would just to cite two of the examples that are given in the testimony among the others that are there. First of all, title V permits, which Senator Boxer brought up. California does have an existing operating permit system in place. It currently covers over 60,000 facilities with over 200,000 permitted units already under an operating permit system. From the beginning, we recognized that changes to this system are needed to conform with the requirements of the act. We feel that we have done this through recent legislation that was just enacted by the legislature.

But throughout the negotiations with EPA, what we have found is not looking at does the system achieve the goals, achieve what the act was intended to do, can we through these modifications modify this system to meet the requirements of the Federal act, but rather getting down into detailed line-by-line adherence to the regulations. This is a similar approach that we find in our interactions with EPA in other areas.

Finally, just to talk about I&M very quickly. Again, the regulations put out by EPA to a large extent treat all States as equal. Although giving lip service to flexibility, in essence mandating a single system throughout the country. Just to cite an example of difference. Cars in the East, in the Midwest rust; whereas, California, our winters are a bit milder, and, as a result, our cars rank up there with the energizer bunny in their ability to keep on going and going. As a result, we have much older, higher emitting vehicles in our fleet and that can be a focus of a more cost-effective solution to achieve the purposes of the act.

California does have an extensive network of decentralized I&M stations in place. EPA's regulations would replace these 9,000 stations with only 200 centralized test only centers, causing further economic disruption in the State and risking consumer acceptability that is critical to a program that has to encompass 10 million vehicles.

Just to close, we do have an alternative that has widespread bipartisan support in the State. This is something that has been worked out with all sides of the aisle in our State assembly, the Senate, the Wilson administration, along with industry and environmental groups. We are somewhat heartened to hear Secretary Browner commitment to work with the State in working out the final details of this proposal, but we do want to make it clear that a bipartisan proposal is on the table that we feel does meet the

purposes of the act and we hope that discussions can proceed from that point very quickly.

Thank you very much.

Senator LAUTENBERG [assuming chair]. Thank you, Mr. Kahoe.

I am going to be sitting in for the Chairman for a few minutes. He had to go out for a moment. I am going to follow the order of the listing on the agenda, and that is to go now to Mr. Robert Campbell, chairman, president, and CEO of the Sun Company, Inc.

Mr. Campbell, welcome. We look forward to your testimony.

STATEMENT OF ROBERT CAMPBELL, CHAIRMAN, PRESIDENT, AND CEO, SUN COMPANY, INC.

Mr. CAMPBELL. Thank you, Mr. Chairman. I welcome the opportunity to be part of this hearing today. It is only fair to alert you, however, that today I am going to test your capacity for good news because before I finish these remarks I will have commended both the House and the Senate for passing the Clean Air Act, which is legislation that I believe has both a noble purpose and achievable goals.

What I want to emphasize today is that if both business and Government will do what they do best, the law will continue to produce very positive results for America. Is it perfect? Of course not. There are lots of things we can do better. Is it manageable? You bet. I realize that there are numerous complaints about the impact of the act, but what I want to share with you today are some simple realities that all of us—all of us—have a right to be proud of.

First, America's air is getting cleaner. Water and soil are improving also. And American industry is truly working hard to establish a positive relationship with State and Federal regulators and legislators while trying at the same time to remain competitive in a tough international market. Most of all, Senator, the attitude is changing. There was a time when environmental protection and economic prosperity were thought to be incompatible. Some of that is still around but it is dwindling. Why? Because industry realizes it must clean up its act, and environmentalist realize you need a strong economy to pay for the clean up bill.

In the few minutes I have at my disposal, I would like to talk briefly about five lessons that I think we've learned while dealing with the Clean Air Act.

Lesson number one: It doesn't have to cost so much. There are several factors at work here. One of them is the rigidity of the law. Leaving little room for flexibility, it locks in on current technology and specifies a $20 million solution known today when just around the corner is a $1 million solution being developed. We're talking about the pace of implementation here, about moving away from command and control and having the patience to let industry develop technically sound solutions that are rooted in good science.

I believe the U.S. industry is willing to spend the necessary money to solve real problems. What we need, however, is your help in making this a cost-effective experience. All the matters of time, technology, and the rigidity of standards are critical to the cost equation.

Lesson number two: It is easier to dance with one partner than it is with fifty. First of all, you need to recognize that some environmental standards require Federal uniformity. It just makes so much sense. Sit where I sit for a moment and see what I see. You end up with one State trying to outdo the other and pretty soon you have a "greener than thou" contest. What does that mean to the manufacturer? Senator, you can't begin to imagine the nightmare in my business of trying to tailor our products to meet the expectations of the varying regions, States, and cities only to have them change their minds later.

If there is one lesson to be learned in the Clean Air Act of 1990 and passed on to future legislation, it would be to establish some standards in environmental performance that cross State lines and, because of their sufficiency, shouldn't be exceeded.

Lesson number three: We need to keep our competitive guard up. Six days ago I testified before a subcommittee of the House Ways and Means Committee. I, along with union officers and environmentalists, testified in favor of an environmental equalization fee on gasoline being shipped into this country from abroad. America has the toughest environmental laws in the world and, frankly, I am glad that it does. And you were part of making that happen. Environmentally, that gives us a leg up. But in the economics of my business, domestic refining, it puts us at a severe disadvantage. Foreign countries with environmental laws 5 to 20 years behind ours have refineries that are unburdened by the cost of upgrading their facilities and they enter our markets with a substantial cost advantage.

So, what do we do? We start shutting down our refineries in the United States and we proceed to export jobs, pollution, and our national security. Senator, that just doesn't make sense. I am convinced that we can find the proper balance between environmental improvement and competitive position and in the process lift the rest of the world's environmental sights.

Lesson number four: When you are winning the contest, don't change the game plan. Let's admit to ourselves it is working. The air is getting cleaner and there are fewer ozone and carbon monoxide exceedances. And 1993 was a very hot summer but we fared a lot better than 1988. And the air quality will continue to get better as we roll out the remaining steps of the existing legislation because we have only just begun.

In my plea for a pause in the legislative process, I am not saying let's cancel what we're doing and go back to the Dark Ages; what I am saying is let's continue with the program that we're on and drop the proposals to raise the bar on the high jump.

And finally, lesson number five: We need to lower our suspicions along with our emissions. What that means is the single, most valuable contribution we can make to the success of the Clean Air Act is for everybody involved—the Congress, the EPA, the States, the environmental groups, and industry—to make up their minds to continuously improve our relationships with each other. That's called trust and it can work.

My company was the first fortune 500 company to endorse the CERES environmental principles. When we first sat down with the representatives of CERES about a year ago, we found out quickly

that there were a lot more things we agreed upon than not. To our surprise, they didn't really want to put us out of business; and to their surprise, we had already made a strong financial and operational commitment to environmental improvement and we were willing to do more. Similarly, in working out the regulatory details with the employees of the U.S. EPA, we have found that in the quiet of a conference room reason tends to prevail and progress is made.

I would just like to put in a plug for a similar relationship between industry and Congress. It is time for both of us to change some old impressions because they don't serve us very well. These stereotype images need to be retired and mutual respect needs to triumph. If we make cooperation impossible, we will certainly make conflict inevitable.

I have resisted the temptation to give out grades separately to Congress, to the EPA, to the States, and to industry because this, in my opinion, is a classroom project. It is called Pass/Fail and we either all pass together or we go down together. If we will just encourage and reward those industries and companies that have shown the willingness to face environmental reality, if we can continue to have an EPA that values performance over power, and if we can have a Congress that sets excellent goals and also cuts us some slack so they can be achieved, then I think one day we can look forward to a Nation that will one day graduate with environmental honors that will be the standard for the rest of the planet. And Senator, in the process we are not going to have to choose between our lungs and our lifestyle.

Thank you for this opportunity to testify.

Senator LAUTENBERG. Thank you, Mr. Campbell. We appreciate your statement. I liked your marking system, too.

Mr. CAMPBELL. Thank you, Senator.

Senator LAUTENBERG. We go now to Mr. Baljet, the chairman of the National Air Conservation Commission, testifying on behalf of the American Lung Association. Welcome, and thank you for being here.

STATEMENT OF PETER BALJET, CHAIRMAN, NATIONAL AIR CONSERVATION COMMISSION, AMERICAN LUNG ASSOCIATION

Mr. BALJET. Thank you, Mr. Chairman. I am presenting comments on behalf of the American Lung Association. The emphasis of my testimony this morning will be health protection measures in the Clean Air Act and a number of issues related to transportation and air quality.

By whatever measure you choose, the Clean Air Act of 1970 has succeeded in providing our Nation with cleaner air. But a sad chapter in the success story is that for most Americans clean and healthful air quality remains a promise unfulfilled more than 20 years later.

One measure of progress, or in this instance lack of progress, is to examine, iver time, the number of individuals living in non-attainment areas. The American Lung Association recently updated its report "Breath and Danger". Our latest estimates are that more than 31 million children and 18 million elderly people in the

United States potentially risk lung disease or respiratory irritation because of their exposure to unhealthful levels of air pollution. The report estimates that 66 percent of Americans live in areas that fail to meet one or more of the current health-based ambient air quality standards. By comparison, in 1989 our estimate was that 60.5 percent of Americans faced such risks.

The fundamental health protection goals of the Clean Air Act are embodied in the National Ambient Air Quality Standards. These standards establish and divine how clean the air should be to protect public health. In the opinion of the American Lung Association, current standards for ozone, sulfur dioxide, and particulate matter do not represent prudent public health policy. For each of these pollutants, EPA has failed to comply with the requirements in the act to review the adequacy of the standards at no more than 5 year intervals. ALA has filed citizen suits in each instance because we believe that scientific studies published since adoption each of current standard demonstrate a strong need to strengthen the standards in the interest of public health.

Progress is being made under the 1990 amendments. Without question, most communities desiring healthful air quality have adequate Federal authority to attain it. But the law is not self-executing. Congress chose to leave a majority of the tough clean up decisions to the States through a more complex State implementation plan process, and we mark Congress low for this. The majority of the responsibility for air pollution control decisions is left to the local political situation.

Mr. Chairman, you asked us to select the top status implementing the 1990 amendments but, it is too soon to make such a determination. Many States have shown innovation and diligence in the implementation of specific control strategies. Unfortunately, no one State has uniformly complied with all the statutory requirements of the amendments. Less than two months before the mandated deadline for submission, most States are struggling to prepare approvable 1993 SIPs that demonstrate a 15 percent reduction in VOCs. If States submit deficient SIPs, the actions mandated in the Clean Air Act must be taken. States have sufficient time to correct any deficiencies prior to actual sanctions. The American Lung Association believes this process must go forward as envisioned by Congress.

The American Lung Association has consistently supported strengthening automobile emission standards. Unfortunately, during debate on the 1990 amendments, significant strengthening of the Federal program did not occur, and we mark Congress low for this action. Fortunately, however, section 177, allowing States to opt into the progressive California program, was retained. We mark the Senate high for protecting this section of the act.

With regard to the California LEV Program, the American Lung Association has supported also an unconditional waiver of Fedeal pre-emption of the LEV standards by the Environmental Protection Agency. To ensure that the California LEV program is a viable strategy for other States, ALA has also urged the Agency to explicitly support the right of States to opt into the program, including support for New York and other States in their litigation. We have also urged EPA to allocate substantial SIP credits for

LEV programs and continue the 1994 cross-border sales policy. EPA should receive high marks for its prompt decision to resolve many of the cross-border issues.

A strong and effective enhanced I&M program is the cornerstone of a comprehensive motor vehicle pollution control strategy for the 1990's and beyond. Unfortunately, enhanced I&M did not get off to a good start and, again, we would give the agency a low grade. EPA's rulemaking was very late, delaying full implementation of the program by several years. However, the final rule is a very strong regulation and received ALA's support.

According to a recent Gallop survey conducted for the American Lung Association, a significant majority of car owners support changes in I&M programs that make programs more effective in lowering emissions. For example a requirement that all vehicles be tested annually for emissions is favored by 82 percent of Americans. Likewise, 87 percent support improvements in testing system equipment so the vehicle emissions can be more accurately measured. A large majority favored descriptions provided for detailed proposed test only programs.

The ALA is extremely concerned about recent events in California regarding I&M. As you know, Mr. Chairman, California's legislature has attempted to pass I&M legislation that falls considerably short of the enhanced program required in EPA's final rule. And although the Californians here will disagree, the inspection program they attempted to pass is merely a continuation of the status quo. Administrator Browner has agreed to work with the legislative leadership of the California legislature allow it to develop an acceptable I&M program. We hope California will act expeditously to comply with the law. If the State does not, in our opinion, EPA must move ahead with sanctions. Under no circumstances should the Agency allow State legislatures even temporarily, to avoid the implementation of high quality inspection and maintenance programs.

I see my time is almost up, Mr. Chairman. I have perhaps just thirty seconds left; if you would allow me the courtesy to conclude my remarks, I would appreciate it.

Senator BAUCUS [resuming chair]. Thirty seconds, you got it.

Mr. BALJET. Thank you very much. Over fourteen months ago the American Lung Association joined with you, Mr. Chairman, to decry the logjam of regulations at EPA. Much has happened since then, including a change in administrations. To assess progress, you have asked us to grade EPA, Congress, and the regulated industries. When I was in school we were downgraded a letter grade for every day an assignment was late. Congress took 10 years to revise the act and has held only three or four hearings in both houses since its passage. The EPA is in a virtual state of receivership, being governed by court-imposed deadlines negotiated long after the act's deadlines. The grading system I described would result in very low marks across the board. However, we are optimistic about the future and hope the new trustees will restore the agency.

And then finally, Mr. Chairman, the American Lung Association recommends that this committee hold regular and frequent oversight hearings. Further, the committee must take a leadership role

in securing adequate resources for the Agency to properly implement the 1990 amendments.

Thank you very much.

Senator BAUCUS. Thank you very much, Mr. Baljet.

Next on my list is Mr. Sherbert.

STATEMENT OF MELVIN D. SHERBERT, AMOCO DEALER AND PRESIDENT, SERVICE STATION DEALERS OF AMERICA, INC., ACCOMPANIED BY JIM DASKAL, GENERAL COUNSEL, SERVICE STATION DEALERS OF AMERICA, INC.

Mr. SHERBERT. Thank you, Mr. Chairman. I am an Amoco dealer in Prince Georges County, Maryland, about twenty minutes from here. I am also the president of Service Station Dealers of America. I am going to try to speak for the 45,000 independent family retailers that are out there. My shadow behind me is our general counsel Jim Daskal. In case I fall apart, he will be here.

It was really great to hear what Ms. Browner and Ms. Katzen said today because we're really looking forward to working with them and the administration on reaching our goals. Some of our comments are pretty strong, especially in our written statement. We're not blaming them or this administration for what is going on, we are just hopeful that things will get better. Based on what she said today, it already sounds like it is going to be better.

The SSDA has attempted to take a constructive approach to clean air and other environmental issues. We have tried to help ourselves and other small businesses to comply. I don't think we've ever said don't regulate us, we just want to be helped with it.

So a key point we want to leave with the committee today is that EPA should establish procedures for coordinating one rulemaking with another and weighing how one rulemaking may effect compliance with another. For example, the status of the reformulated gasoline rulemaking is in flux today. There are special exemptions proposed for segments of an industry and I heard just this week something for Venezuelan refiners. This threatens the competitive viability of other small dealers and we're faced with raising thousands of dollars to comply with the other regulations, such as the Stage II vapor recovery. As Louisiana officials testified in March, Stage II costs $2,000 to $3,000 per nozzle or more. That is a cost that has been rising due to the lack of coordination between rulemaking.

EPA action or inaction can effect rule coordination at the State level. When EPA illegally stopped the on-board canister rule, it took several months for the court case to be heard. Moderate nonattainment areas such as Nashville began requiring Stage II in their implementation plans. Tennessee dealers had already broken concrete to upgrade underground tanks, that is a process that shuts us down for a month or more and takes more than a year to recover from, and now these same dealers are being asked to break concrete again to install Stage II. Of course, there the costs are far greater than it would have been. Regulations cost enough without Government inefficiency adding more to it.

More needs to be done in the area of providing small business with the means to comply. Section 507 of the act needs greater re-

sources allocated to it. It is off to a slow start. We recommend that air grant money given to the States under section 105 be specifically earmarked for that purpose. And such technical assistance, at least for our industry, is just not enough. For example, fear of underground tank liability has made access to capital a real pressing issue for us. It is just hard to get money from a bank to invest in tank installation or Stage II or anything that is on property; that scares the bankers. So we have suggested expanding the permissible uses of the underground tank fund and favorable tax treatment on environment investment, particularly those like Stage II which gives no return back to us, it just the cost of doing business.

Since the 1984 RCRA Amendments brought us into the environmental age, our resources have been strained to the maximum. Not only do some rules mandate investments upon which small business will see no return, other rules simply are destructive. Regulations such as the Inspection and Maintenance Rule would destroy thousands of businesses in States such as California, and the survivors would be left without the ability to invest in other environmental initiatives. Not only is this counterproductive, it is anti-consumer and it is contrary to the plain language of the act.

SSDA has been calling for enhanced I&M programs in testimony before this committee and others since 1986. The provisions of the 1990 act required EPA to issue guidance to States on how to meet an achievable performance standard. That should have been a system somewhat to what was new then, the California Bar 90 system, and that was spelled out in the statute. EPA has attempted for force its I&M 240 system on the States and has actively discouraged innovation with systems that can yield equivalent air quality benefits at far less cost and at far less inconvenience to the motorists.

Instead of selling the system it invented on its merits, EPA has used threats of highway fund sanctions in economically distressed States like New Jersey and California who feel they have a better system. States are told to do it our way or on November 16th the highway money is gone. We think the EPA threats themselves have some dubious legality; beyond that, it is a bad way to make public policy, especially in the light of the State-Federal partnership mandated by the act.

Bad economics also makes bad public policy. The regulatory impact analysis on this rule is far from accurate. Many of our members have invested thousands of dollars in the I&M program and derive a substantial portion of their income from it which enables our members to employ thousands of people. An example from California. Right now in California, there are 9,600 test sites, 7,500 are in serious or severe non-attainment areas but they have 26,000 certified technicians. EPA's plan for southern California, which has 4,500 sites, calls for 47 sites with 4 to 6 lines each. That is just a little over 200 technicians to handle that where 7,500 are doing it today. Putting those people out of work and cutting off highway funds is not going to get this economy moving again—a goal shared by every American. The economic analysis used by EPA needs substantial improvement and the one used on the I&M rule does not even get fundamental facts about our industry correct.

But we were glad to see what we saw today and maybe things are going to get better. Mr. Chairman, our statement grades EPA very severely. We wish it could be otherwise but our experience with three major rulemakings leaves us no alternative. We believe this can and must improve. No small business group in the country has been faced with so much environmental regulation hitting them at one time. EPA must consider the cumulative effect of such rules on small businesses and the interplay between such rules in order to avoid skyrocketing compliance costs.

Our industry cannot meet this cost burden without assistance. We are willing to comply but we need your help to be able to do so. We are local business people whose families breath the same air and use the same water that we all want to keep clean. We are there where the pollution is, we are not someplace in some corporate office making decisions. The Congress, EPA, the States, and we must act as friends and partners if our goals are to be met, and our members are willing to help.

Senator BAUCUS. Thank you very much, Mr. Sherbert.

Our final witness is Doctor Joe Sullivan.

STATEMENT OF JOSEPH SULLIVAN, SENIOR VICE PRESIDENT, CIBA-GEIGY CORPORATION

Dr. SULLIVAN. Thank you, Mr. Chairman, for the invitation to be here and the opportunity for Ciba to offer our comments on the implementation of the Clean Air Act Amendments. I noticed your struggle with the name of our company earlier and I assure you that that's not an uncommon problem. We have been moving to refer to ourselves simply as Ciba.

Senator BAUCUS. It reminds me of Exxon.

Dr. SULLIVAN. It is not exactly a household name. But, in fact, we in the U.S. represent one-third of the worldwide Ciba-Geigy enterprise. We have sales in the United States of $4.5 billion in health care, agricultural, and industrial products. We produce over 80 percent of what we sell in the U.S. in this country, and we are a major exporter into the world market. We compete for investments for manufacturing facilities in this worldwide enterprise, and in many situations, in fact, we represent a microcosm of the world economy.

In the environmental arena, we have given high priority to environmental compliance and we have placed intense efforts in reduction of our emissions, particularly at the source, with process improvements. We have strongly supported various public and private initiatives for voluntary environmental improvement.

We commend the committee for its effort to continue to improve the environment and to bring market incentives to the process. We have followed the Clean Air Act Amendments process from its inception and, perhaps somewhat surprisingly, we have found that for our particular circumstance, as a speciality chemical and pharmaceutical manufacturer who had focused on source reduction, we don't anticipate at this point the need for major modifications of our existing facilities.

However, we are particularly concerned that we will be faced with a complex and burdensome permitting process for these exist-

ing facilities and an especially complicated process for new plants and expansions. Clearly, we fear that this will inhibit our ability to compete for investment, both as a U.S. company and in the world economy.

I would like to offer a quick real world example. In 1990, our global business which supplies additives for plastics and coatings needed new capacity to meet a rapidly changing market situation. The plant needed to start up in 1992. We tried very hard to get that facility in the United States but uncertainty in the permitting process and our inability to assure our company when that plant could come on line resulted in the fact that the plant was built in Mexico. The plant was built and came on line in 1992.

We realize the sensitivity at this point in time of building such a plant in Mexico and we recognize the obvious question—did this plant meet the environmental standards that would be expected in the United States? In fact, a team of Swiss and Mexican engineers designed the environmental controls. They were equal to the Swiss standards and comparable to our U.S. facilities which were operating at that time. It, in fact, meets a very high technical and environmental standard. The issue was not the environmental standards, it was the timeliness and predictability of our process.

So in summary, we are concerned that the implementation of the Clean Air Act Amendments of 1990 have us facing a major new thrust in the direction of command and control. Many in industry, in environmental groups, in the administration, including Ms. Browner, have recognized that command and control approaches to environmental progress are expensive and they are burdensome and frequently have limited effectiveness. We believe that in your oversight of the implementation of the Clean Air Act Amendments of 1990 that you should emphasize those provisions of the bill which attempt to achieve incentives and voluntary actions and standards based on good science, and that you will attempt to limit those sections which will result in bureaucratic permitting processes and compliance processes so as not to impede the ability of the manufacturing sector of the U.S. companies and the U.S. economy to compete effectively.

I was struck, if I may, by Ms. Browner's chart showing the need for 350,000 permitting activities. I would suggest that when we look from the private sector that you could probably multiply the public sector burden by two or three orders of magnitude in terms of the resources that it will take to comply. We often find that we have competing needs for resources to meet the burden of ongoing permitting while we are at the same time trying to develop and implement future modernizations and expansions.

I appreciate the opportunity to make these comments, and I would be happy to answer any of your questions.

Senator BAUCUS. Thank you very much, Dr. Sullivan. That is very interesting. Are you saying that environmental standards that you applied to your plant in Mexico would be the same as if that plant were constructed in the United States?

Dr. SULLIVAN. The environmental standards in that plant are in fact, based on the same standards which would be applied if the plant were built in Switzerland. A group of Swiss engineers from our parent company, along with their Mexican counter parts de-

signed the plant to meet the same standards required in Switzerland, which were I think generally comparable to U.S. standards. As I say, they represent a very high technical standard and they were, in fact, comparable to our existing operations in the U.S.

Senator BAUCUS. OK. I am just trying to get a sense of when you say "comparable," are they for all intents and purposes the same?

Dr. SULLIVAN. Yes, as what we had in existing operations.

Senator BAUCUS. Or like if the Clean Air Act applies to plants in the United States today versus the Mexican standards, I am just curious if you were to build that same plant in the U.S. today, would you be meeting the same environmental standards?

Dr. SULLIVAN. If we were to build that plant in the U.S. today, the standard might be marginally higher. But I wouldn't say in terms of a technical or environmental impact that it would be significantly higher, if you understand the point I'm trying to make.

Senator BAUCUS. Which is to say, just in your firm's experience, you are not moving to Mexico or placing your plant in Mexico for environmental reasons?

Dr. SULLIVAN. Absolutely. As a matter of fact, we were very sensitive, as you might imagine, to that kind of a concern. In fact, in establishing the technical standards for that plant, the team involved took particular recognition of the comparable standards in the U.S.

Senator BAUCUS. Which is to say, if I hear you, that you don't have a complaint with the environmental standards in the Clean Air Act, you think they are OK because you built a plant in Mexico with the same standards roughly, but your compliant is with the process and the delays and so forth.

Dr. SULLIVAN. That's right.

Senator BAUCUS. Could you expand on that a little bit. Even though you think the standards aren't too high, expand a little more on what you think the problem is?

Dr. SULLIVAN. With regard to the standards and most of our current facilities, we don't anticipate that we'll have to modify them to meet those standards. We don't think the standards are significantly beyond in general what we're going to have to achieve.

Basically, the problem is with permitting process. Frequently even routine modifications or expansions involve very detailed, I'll call it a plug-flow, if you understand, process. For example, in many countries they use concurrent approval. They allow a company to proceed with engineering or even construction while the review is going on. Here, we have typically very slow, very detailed permitting requirements that won't allow you to move to step 2 until you've absolutely dotted all the i's and cross all the t's on step 1, et cetera. Frankly, I think we have put in place a process which is based on an adversarial approach, as opposed to a constructive and positive approach based on performance. This adversarial approach interferes with us moving ahead in an expeditious way.

I think in many large corporations and international companies that predictability, some kind of certainty with regard to when you can deliver a result, is frequently more important than some of the other requirements. We find the lack of predictability in the process perhaps being one of our biggest concerns.

Senator BAUCUS. Mr. Campbell, to what degree do you agree with those statements? Which is to say the degree to which you think the standards in the act are not too high—and if you have a different view, I'd like to hear that—but the degree you think the standards are not too high, the degree to which the problem is, as Dr. Sullivan is outlining, just the process.

Mr. CAMPBELL. I certainly agree with Dr. Sullivan that there are issues with the process. But let me go back to the standards. I don't disagree necessarily when we're talking about new plant construction. But what we're faced with today is the conversion or changeover of existing plants, and there we have a tremendous problem.

Dr. Sullivan gave you a real world example. If I could, I would like to give you another real time example of what is going on today. We are investing in our plants right now, the existing plants, the older plants, in order to reduce air, water, and soil contaminant emissions. We understand that; that is part of the various regulations. However, foreign manufacturers do not have to do that with their existing facilities.

Senator BAUCUS. What do they do?

Mr. CAMPBELL. Well, they don't have to be worried about the Clean Air Act or RCRA or Superfund or anything of that nature. If they built a refinery 50 years ago and it is polluting the ground water, they don't have the same kind of restrictions.

Senator BAUCUS. So you are saying they are grandfathered in. There is no——

Mr. CAMPBELL. Our laws don't apply to those foreign countries. A recent NPC study indicated that their environmental laws are at least 5 to 20 years behind ours. So what we are doing is taking our existing facilities and piling in tons of money, hundreds of millions of dollars, we are personally as a corporation, in order to reduce and eliminate the air, water, and soil contamination, and we don't disagree with that. We understand that is part of the new regulations. Foreign manufacturers don't have to do that, they don't have to recover that capital.

The second point is we are also investing in our refineries to produce the new cleaner burning fuels. You say, OK, the foreign manufacturers have to produce those fuels, too. But they have an exemption from the Clean Air Act Anti-Dumping law. What that means is that they can produce the fuel a lot less expensively than we can. That is a fact of life. Now the NPC, National Petroleum Council, just issued a report the other day and what they indicated was that currently manufacturers of fuels in this country are about two cents a gallon disadvantaged to foreign. With the reformulated gasoline of 1995 and 1998, that grows to seven and thirteen cents per gallon. I am not an alarmist, believe me, and although companies have talked about twenty-five to fifty cents a gallon, we have never believed that. We agree with the NPC that it is in the seven to thirteen cent a gallon range disadvantage for U.S. manufacturers.

Senator BAUCUS. As a consequence of the requirements of the act?

Mr. CAMPBELL. Absolutely.

Senator BAUCUS. On reformulated gasoline only?

Mr. CAMPBELL. On reformulated gasoline only. Senator, when they passed the Clean Air Act, what they did, and we don't disagree with that, as I indicated in my remarks, is they increased the cost of gasoline in the United States. In fact, I testified before a subcommittee of the House Ways and Means Committee, and myself, environmentalists, and union officials are saying that you really need to consider an environmental equalization fee for other off-shore manufacturers who don't have to comply with the same laws on correcting their existing facilities. That gives them a tremendous advantage and puts us at a disadvantage, and that is why refineries are being shut down. That's an issue that is almost old hat. We have been talking about that and we want to continue to plug for an environmental equalization fee to equal the cost between off-shore manufacturers and our own; otherwise, we will continue to shut down plants in the U.S.

But there is something new that just surfaced recently. In fact, Mr. Sherbert was talking about it in his prepared remarks. The coup de grace for me was announced two weeks ago in London by the Venezuelan minister of energy and mines; his name is Dr. Alirio Parra. What he was proudly telling the public at that meeting in London was that they have been aggressively lobbying at the highest levels of our Government and they are certain that they will be given more favorable treatment in these December 15 rules that are coming out than was originally proposed in the RFG rulemaking for the Clean Air Act. What he said is that they are lobbying for delay in the requirement to provide cleaner gasoline to the United States because they are not sure they can recover the invested cost. So it is not only not investing in your plant or producing the gasoline, now what they are looking for is an exemption.

Senator, if you look at the facts behind this thing, I tell you it is an absolute outrage. The reason the Venezuelan oil company, P.D.U.S.A., cannot provide gasoline and comply with the regulation is because of olefins. They have twice the olefin content in their gasoline that we do here. Olefin is the worst actor of all the hydrocarbons in ozone formation. The way you correct the problem is you build a reformer. And what Venezuela said is it is going to take them 4 years to build a reformer to correct the problem; therefore, they can't comply with the act, they can't supply the gasoline. Senator, even with our own tight restrictions and our own environmental laws and our own permitting, we built a reformer in 1 year.

What this is going to amount to if this continues to go through, and it has just surfaced, is that the States, the individual States in the Northeast are going to have to ratchet down their restrictions on other corporations in order to reach compliance with the ozone attainment or non-attainment goals.

Senator BAUCUS. That is very interesting. It is also disturbing, and I, in other capacities, will look into that. But apart from the competitive problems that our industry is facing as a consequence of our act—those are real problems, but putting those aside for just a moment—addressing the Clean Air Act here from a process point of view, addressing the points that Dr. Sullivan is making, and assuming that the U.S. standards are not improper except for the competitiveness problems, what about the process? Do you have

problems or do you not have problems with your industry's working with EPA and State agencies in implementing the act?

Mr. CAMPBELL. Senator, as far as the process—by the way, let me just add one little brief comment and then I'll answer that question specifically. The point that I just made right now is a major problem. I just made the decision to shut down the plant in Tulsa, Oklahoma, We shut a fuels plant down there and laid off the people because we couldn't afford to make the investment to comply with the Clean Air Act. Those people are now laid off.

Senator BAUCUS. Right. But because of the comparative breaks that your competitors in other countries have.

Mr. CAMPBELL. And what we're saying is now other countries are lobbying to have exemptions from that. So it is a major problem.

As far as the process is concerned, as I indicated in my remarks, we are working I think quite well with the EPA. We recognize the restrictions that they have, the difficulties they have as far as the amount of work. But when you get behind of closed doors with the individuals, reason prevails. What we have found in a couple of instances is that the laws written by Congress are so specific that even if the EPA agrees with us that in fact there is a more cost-effective way to do it, they have indicated that their hands are tied and that we are going to have to go ahead and go through with it. So there are process issues.

Obviously, this is a new law, it is a complex law, it is an expensive law, and it continues to grow in scope. We are working our way through that, but that is why I was saying in my prepared remarks that we are going to have to develop some amount of trust so that you set the goal and then allow industry to try and come up with cost-effective standards.

Senator BAUCUS. I appreciate that.

If I could, I would just go briefly to each of you about report cards, what is behind the grades. You, Mr. Kahoe, you basically—this can't be true; I don't believe it—you give Congress an A, A+, A, and an A+. We both know Congress a little better than that.

[Laughter.]

Mr. KAHOE. I'm not the teacher.

Senator BAUCUS. Why?

Mr. KAHOE. I think it is when we look at the act that we feel it is achievable. There are areas that are brought under the Federal Clean Air Act that address air quality problems in California that we had not been working on.

Senator BAUCUS. What about Mr. Campbell's point that the act is too prescriptive?

Mr. KAHOE. I think in most areas, again, a lot of the act ties in with existing California programs. A lot of those actions are underway. It is something where, again, some of the process issues that people have brought up, that is something that we have been taking a very hard look at over the last 2 years on what we can do to maintain the standards but get rid of a lot of the red tape requirements.

Where we find the most prescription is in the regulatory process where what is taken in the act where flexibility is allowed or even in the regulations where flexibility is alluded to, in practice when it comes down to actually implementing the programs we get in-

creasingly a lot more detail imposed on the States which then have to deal with the local Governments and industry.

Senator BAUCUS. While I have you, your view, California's view, maybe California doesn't have a view, as you know, the auto industry is contesting New York's imitation of "the California car" standards in New York. Do you have a view on that issue? It may not be appropriate to ask California's view.

Mr. KAHOE. Again, I can't really comment on a New York issue. From the standpoint of California, we have always maintained under the amendments and in the prior act a separate California emissions requirements for vehicles. That has been very successful. In fact, that is probably the single greatest reason why we've made so much progress in cleaning up air in the State. Again, mobil sources are our major air pollution problem and continue to be so.

Senator BAUCUS. Your view, Mr. Baljet, on that issue, particularly whether or not EPA should get involved in that law suit.

Mr. BALJET. Mr. Chairman, the mobile sources program has provided tremendous results for the State of California. ALA believes that those States mobile to identify significnat emission reduction strategies consider adoption of adopt the California program.

Senator BAUCUS. I'm talking about the New York auto industry difference and whether New York can adopt the California car standards in New York.

Mr. BALJET. Mr. Chairman are you asking specifically about the low emissions vehicle program?

Senator BAUCUS. Yes.

Mr. BALJET. ALA supports efforts by the State of New York to adopt the California LEV program.

Senator BAUCUS. Is it your view that EPA should get involved in that?

Mr. BALJET. If EPA's arm is necessary to strengthen the endeavor by the State of New York, then we would invite EPA to take a strong part in it the pending lawsuit.

Senator BAUCUS. You think that is a proper role for EPA to get involved in that contest between the auto industry and the State of New York?

Mr. BALJET. ALA would hope that EPA's involvement would not be necessary, Mr. Chairman. But we learned a long time ago that a little help from a friend sometimes is very much needed and, in that light, we strongly support EPA's intervention on behalf of New York.

Senator BAUCUS. Mr. Kahoe, just briefly going through the rest of the grades. For the EPA, for health you have a B−; transportation, incomplete; Federal-State relations an F; market-based programs, C−; technology stimulation, C; timeliness, D; and innovation an F. Those aren't high grades.

Mr. KAHOE. Right.

Senator BAUCUS. Without going specifically into each, can you add something of basically what is all this getting down to as you see it and what can we do in the future collectively to bring those grades up?

Mr. KAHOE. I think it again gets back to the major point of our testimony, which is EPA's proper role to set standards and leave as much flexibility up to the States as possible on how to meet them

and what kind of structure is going to be the most acceptable while achieving the standards.

I think the LEV, our reformulated gas program are good examples of what we're really trying to do. In the case of reformulated gas, we did not specify for the purposes of our clean fuel, clean vehicle program that industry will do the following; we set up a fuel neutral policy, enabled it, whether it is methanol, reformulated gasoline, whatever, to meet that standard. In fact, that spurred on a great deal of innovation. Whereas only a few years ago it looked like methanol would be the only fuel that could meet our standards, now we see reformulated gasoline as playing a major role.

Again, coming back to the question of grades, I think probably a number of those grades are reflective of our recent experiences on the inspection and maintenance program. That's a case where we are saying we will meet the standards of the act. The legislation that is moving forward sets it out that we'll measure it on performance and we commit up front to adding additional enhancements if needed to make that.

Senator BAUCUS. Did you hear Ms. Browner say anything that is encouraging?

Mr. KAHOE. I think it is encouraging in that we see the commitment but, with all due respect to Secretary Browner, our experience has not been EPA working with the agencies and the legislature to pass an act this year. In fact, what we experienced was EPA at last minute coming in and preventing passage of an act to where we are now at a point where we cannot pass legislation until January to meet the requirements of that particular part of our SIP. We hope that we have fruitful negotiations with the agency and that this is an issue that Secretary Browner remains heavily involved in. I think it does present some major issues in the type of flexibility she was talking about this morning and cooperation is in fact the one that we need.

Senator BAUCUS. I see you rank California pretty high among States that are doing a good job, with Massachusetts and New York next. Is that because as larger States you have more resources? What is the reason? Why do you rank those States up there?

Mr. KAHOE. I think a part of it is we have a fairly long history of cooperation with those States in dealing with similar types of air quality problems, particularly in the mobil source area, and some of the cooperation that has been built up between our air agency and those States on dealing with the LEV program.

Senator BAUCUS. Very briefly here by industries, the chemical industry, B; utility, A; auto, C; oil industry, B; manufacturing, A–; and small business, A–. Why that variation and what explains it?

Mr. KAHOE. I think that is just probably more reflective of the different types of rulemakings that we've gone through. In going through that list, I can target specific regulations dealing with each. I think the whole concept that we're trying to get at is really taking a hard look at the process requirements; where can we, working with industry, working with environmental groups, the public, where can we achieve our purposes, our standards but in ways that really cut down on the time delays, the paperwork——

Senator BAUCUS. What should we in the Congress know to help make a difference?

Mr. KAHOE. Again, I think it is the emphasis on providing States the flexibility to do what fits in their area as long as we meet the standards. I think there are other areas coming up, such as technology development, something that California is heavily involved in. We have a history of technology anticipatory, technology forcing regulations, we have developed an environmental technology partnership. I think we are also looking very hard at alternative market incentive programs, something that you've raised today. We have been working with South Coast District on their reclaim program to get away from individual permits and move to an emissions trading program.

Senator BAUCUS. Let me ask you, Mr. Baljet, two questions. What about reclaim? Some could argue it is just an excuse to pollute. And what about flexibility that Mr. Kahoe, Mr. Campbell, and others suggest? Does the American Lung Association agree with more flexibility for agencies or not?

Mr. BALJET. ALA believes that States must meet the requirements of the act. That is the bottom line. ALA supports flexibility and the use of innovative management techniques in completing any require review process for State actions.

With regard to RECLAIM, on unfortunately, as currently it does not meet such a test. The ALA of California has worked and will continue to work until the South Coast Air Quality Management District to insure the RECLAIM, if adoptedmeets the act's requirement. I have listened very carefully to the statements made by the chairman of the Sun Company, by Mr. Sherbert, and Dr. Sullivan. This Nation has moved forward fairly rapidly to do a fantastic job in protecting its natural resources including air and water. It may be time to move more aggressively into the international arena and protect the global national resources.

I think after all we live in one world and it is very important for us to move forward. I think this Nation needs to set that leadership and take action very quickly.

Senator BAUCUS. So you think though that the objectives of clean air can be achieved and, as I hear you, perhaps should be achieved with more flexibility delegated to the agencies than currently. Is that correct?

Mr. BALJET. Mr. Chairman, we feel that the deadlines of the act should be met. We believe there is flexibility in States ability to meet those deadlines and the other statutory requirements of the act.

Senator BAUCUS. What about the California decentralized I&M?

Mr. BALJET. The decentralized California I&M proposal is not equivalent to the act's requirements and therefore is not acceptable. If California cannot meet EPA's performance standard, then sanctions ought to apply.

Senator BAUCUS. So you have less quarrel with the way California achieves it goal than whether they achieve their goal?

Mr. BALJET. That's correct. The requirements of the act provide the framework for acheving clean air goals and should be met.

Senator BAUCUS. And you think it is possible for California to achieve its goal with the California decentralized I&M program?

Mr. BALJET. No, ALA believes that centralized programs have been shown to work much better.

Senator BAUCUS. Mr. Sherbert, your comments on all this. We've covered a lot of areas here. I guess I am basically interested in your general comments about how we do this process better, but, more specifically, comments on I&M, Stage II, and on-board canisters. Is your quarrel with the standards? Do you think they are too high? Mr. Campbell hasn't had a lot of problem with them except from the competitiveness point of view, the refineries, for example, creating competitiveness disadvantage consequence. Do you think the standards are too high or not?

Mr. SHERBERT. I don't think it is a standards problem, Mr. Chairman. I think it is things needs to be done decently and in order. The delay that was caused by the on-board canister controversy caused a lot of problems in some of the States that probably would not have considered Stage II and don't really need it. I think that is a real problem that was caused by that. But you're right, that is now history and we have to go forward.

Senator BAUCUS. Stage II is not required in every city.

Mr. SHERBERT. No. But this is in regards to the way EPA implements the law. It is sort of set up like a Catch 22. If you don't do all these things, you don't get the proper credits. I know California is suffering with that right now. If they use decentralized, as I understand it, they only get half the credits. That is something I believe was decided by EPA. So it is the implementation by EPA, by the regulatory agency, not the law that is at fault.

Senator BAUCUS. OK. So let's go back to Stage II. Do you have any quarrel with cities are required to implement Stage II?

Mr. SHERBERT. No. In today's market we don't because now the state of the art, the state of the equipment has reached the point where it really works. I was a dealer in the District of Columbia for several years, and I am tell you, the Stage II that we had did not work. The customer hated it, everybody hated it. I guess it was a good testing ground but it didn't work. But now it is a lot more efficient, the state of art is so much better, the different companies—my company has a proprietary nozzle and doesn't have all those contraptions attached to it and it really works. It achieves the carb standards in California.

So, no, I think we're at that point now where we can implement where it should be implemented. In areas, I mentioned Tennessee, where they are probably not going to need it, their State EPA agency pushed for this implementation obviously to get the credits from EPA and it caused a big controversy. If that goes through, then they have to dig it all up again and there is another $50,000 and another month out of business that they have to go through. That's the way it is put together. And decently and in order is probably the best phrase I can think of.

Senator BAUCUS. So essentially you are saying you don't quarrel with the standards, but it just has been an on again, off again, after something is agreed upon then suddenly it has got to be changed or different? I am just trying to get a sense of what the problem is. I'm not quite sure I understand.

Mr. SHERBERT. I think the problem for us today, the thing that hits the hot button for dealers, of course, is what is going on in California. Dealers from all around the country are watching that. New Jersey is——

Senator BAUCUS. You mean the I&M question?

Mr. SHERBERT. The I&M question. That is a serious thing with jobs. It is my understanding that there are 26,000 certified technicians in California now and there are thousands and thousands of repair facilities that do the inspections. What I saw for southern California is 47 stations with 4 to 6 lanes. It is like Stage II in its early version; it just can't work right now, not based on that. But what I see in California, what they have there is working. And for EPA to come into California and into Virginia and other States and to say that all service station dealers and all repair shop people are crooks and that's why they can't do decentralized, it is very offensive and it is not true.

Senator BAUCUS. Mr. Kahoe, what do you have to show to get EPA approval with your program, and do you think that is fair or unfair is what I'm asking?

Mr. KAHOE. Currently, what we are required to show to get EPA approval for the program is that we can pass those tests that have been set up in their computer model. We feel that's an improper way of measuring the success of a program. The EPA has their studies. There has been several independent studies done in California which basically come down to the conclusion that there is nothing to justify now whether a centralized program has so clearly defined benefits over taking a decentralized program and improving it.

Before we take a $400 million industry and tear it apart and put the investment in yet another unproven system, we feel that it should be shifted around—measurement should not be how well we get through a computer model, but what are the annual emissions reductions and are we meeting the performance standards of the act. If not, then we need to make further enhancements and if, at the end, we don't, then we should be sanctioned.

Senator BAUCUS. So you don't yet know whether you're going to decide, make a judgement as to whether EPA has been reasonable or not? You are getting up to the point, but you're not yet at that point. Is that correct?

Mr. KAHOE. At certain moments, you probably get a very quick conclusion here. I think, again, the kind of cooperation that Secretary Browner put on the table is something that has been very much missing from the process and we hope that she stays personally involved in this because we do need this issue to be elevated within EPA if we are to forge that cooperative relationship between the State and EPA that we need in order to meet the requirements.

Senator BAUCUS. Mr. Baljet, I notice you don't give very high grades to anybody. Industry is between D and an F; Congress is between C− and D+; you give the EPA in various categories grades between D and F. That's not very hopeful. It can't be that bad. Did you read that Newsweek Magazine article that there is progress?

Mr. BALJET. Mr. Chairman, I must admit we disagree with the articles conclusions. I hope the testimony I presented to you earlier stated our concerns about air quality trends. But we are optimistic. On our issue of grades, we cannot give higher grades at the moment but we will work very hard with the agency and Congress to hopefully improve this for next year's scorecard.

Senator BAUCUS. I have no other questions. I am just wondering has anybody said anything, either the prior panel or this panel, that deserves a reaction or response in the view of any one of you?

OK, Mr. Campbell?

Mr. CAMPBELL. I understand why you are searching to say is there some way we can do this thing better. Is there some kind of fundamental improvement we can put in place.

Senator BAUCUS. Right. Exactly.

Mr. CAMPBELL. When the Clean Air Act was drafted and passed 3 years ago, that seems like eons ago because there has been so much progress since then. If you think about the environment back then, I'm talking about the political environment, it really was a lack of trust, probably well-founded, but a lack of trust. And if you have a lack of trust, then what you rely on is specificity and rigidity and hard dates and hard solutions. And the way to do that is to lock in on what you know today.

I didn't offer any grades to people. I said this is a class project and we either all pass together or we all fail together. I really believe that. And if you work with Members of Congress or the EPA or the States or industry, you really find people who are trying very hard to do the best they can with what they've got. If in fact we've learned anything, it is that in order to make progress here and do it the most effective way, what we have to do is have a level of trust so that Congress sets the standard, they say this is what we want you to achieve, and then allow the regulatory agency, like EPA, and industry to accomplish it in the most cost-effective way. If you do that, we will make tremendous progress.

Senator BAUCUS. What do we do when the agency does not seem to be doing a very good job in trying to achieve the standards and goals that Congress has set?

Mr. CAMPBELL. Then I think you would have to replace the administrator.

Senator BAUCUS. That's a bit difficult sometimes for Congress to do.

Mr. CAMPBELL. If you set the goals and have dates associated with them, there ought to be penalty. I don't disagree with that.

Senator BAUCUS. What should those penalties be? Who is penalized? I ask this because many times in my experience I have seen people in Government—and I think most people in Government try to do a very good job.

Mr. CAMPBELL. Right. I agree.

Senator BAUCUS. But on occasion there are some who, for whatever reasons—cavalier, ulterior motives, or whatnot—make decisions which are very much against the public interest, just bad public policy. In the private sector they would be dismissed, reprimanded, and so forth, but in the public sector who bears the cost? They don't. They are never penalized. It is the public that gets penalized. I am trying to find some way to create more carrots and more sticks and so people do what we trust them to do. I am just searching for ways to find more carrots and more sticks.

Mr. CAMPBELL. I think if we were to go back and in a sense redo the Clean Air Act again, relive that period of time, we would come up with probably the same kinds of goals but I think we would do it probably in a much more constructive, more cost-effective way

even having bridged two administrations and the bureaucracy containing the individuals that you are referring to and some companies out there being very intransigent, those just kind of digging in their heels. But there is peer pressure and slowly but surely the tide is turning and things are moving off in the right direction.

But if we say the only way to solve this problem is to write it down, be specific, we are not going to get it. We need——

Senator BAUCUS. That's the problem. I am trying to find the solution.

Mr. CAMPBELL. I guess what I'm trying to say is that I think the solution involves to a very large extent increasing the level of trust, not seeing industry as those people who just love to pollute, or the EPA as those people who just love to delay, or the Congress as those people who love to punish us. I don't think that is the overall view of any of the three groups. I think people are really trying right now to take it in the right direction. The peer pressure on the public out there is tremendous. We have to publish our emission every year now, as well as other corporations, and that gets on the front page.

Senator BAUCUS. Is that helpful? That's constructive?

Mr. CAMPBELL. Absolutely. It is tremendously helpful. This year we are going to publish for the first time our environmental annual report because it is lining up with the CERES principles. It puts out in the public forum what we're doing wrong. If you get corporations to do that year after year, the peer pressure on those corporations and the public pressure to improve it is phenomenal, it really is.

Senator BAUCUS. Thank you very much.

Dr. Sullivan?

Dr. SULLIVAN. Well I have been impressed today by what I would say in my view is a common thread running through the whole discussion. Frankly, I thought it started with Senator Boxer and was especially emphasized by Administrator Browner. There appears to be very little disagreement, I think even at the table here, with regard to the goals and even the standards of the Clean Air Act Amendments. But we've heard a lot of discussion about the process and the impact it is having—both from the Administrators side of effectively putting the provisions of the act in place, and certainly from the industrial side of trying to respond to those provisions.

I believe that we have a process in place that typically, as Mr. Campbell indicated, assumes that 99 percent of the people are looking for every opportunity to violate. I think we should have a process in place which tries to emphasize the standards and gives flexibility to the local agencies, the State agencies, et cetera to encourage companies to meet good standards. And if there are people who don't comply, then obviously you have to have the capability to enforce. But I think we have put in place a process which is in fact, as I have tried to indicate, unnecessarily burdensome and adversarial.

If I may put it in this way, based on everything we've heard today, if you were a multinational enterprise investing several hundred million dollars in new facilities, would you feel comfortable about the predictability and the certainty of the process and

your ability to then meet what you were expecting as a market situation.

Senator BAUCUS. That's a very good point. For example, I use the HON Rule that has been referred to today, it has been roughly 10 years in the making. That is in the chemical and toxic rule. During that period, CDs have been invented, video cameras, just a whole multitude of new products and new developments which would not have been developed if they had been subjected to this same time consuming process and red tape that some of these rules have undergone.

I am impressed with the agreement on the standards essentially. We have got to deal with the competitiveness problems in other ways I think, but deal with it very directly. Still, as I sense the general agreement on the standards, as you said, Dr. Sullivan, it is a process that maybe should achieve our results more timely and with more predictability.

Thank you all very much. Very interesting.

[Whereupon, at 1:23 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Statements submitted for the record and responses to additional questions follow:]

STATEMENT OF CAROL M. BROWNER, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and Members of the Committee, I am pleased to be here today to discuss with you the Environmental Protection Agency's efforts to implement the Clean Air Act Amendments of 1990. Mr. Chairman, I know that you and other Members of this Committee share a pride of authorship in these amendments and I would like to commend you for your work in crafting this historic legislation to protect the health of the American people and the quality of our environment. I want to assure you that the Clinton Administration shares your desire to clean up the nation's air. Moreover, I want you to understand that I have a personal commitment to ensure that my colleagues and I implement the Clean Air Act Amendments in a manner which will protect health and the environment, minimize costs, and encourage pollution prevention add innovative technologies. We are continually looking for ways we can get the greatest air quality improvements for the least cost.

As you know, the amendments require a regulatory undertaking of immense proportion, affecting virtually every sector of our society. Since assuming my job in January, I have signed more than 20 proposed and final rules implementing major provisions of the act to reduce urban smog (ground-level ozone), combat acid rain, cut emissions of toxic pollutants, and protect the stratospheric ozone layer.

To protect the ozone layer, for example, I have signed a final rule requiring training and certification to recover and recycle refrigerant from air-conditioning and refrigeration units during repair and disposal. I also have signed rules that require labelling of products containing chlorofluorocarbons (CFCs) and ban class II nonessential uses of ozone depleting chemicals. I have signed proposed rules accelerating the phaseout of the production of CFCs to January 1, 1996; and identifying safe alternatives to ozone depleting compounds.

In the past 7 months we have taken several steps to reduce emissions of air toxics. For example, I have signed a final rule requiring technology controls and/or improved work practices at 25,000 industrial and commercial dry cleaners. This will reduce projected 1996 emissions of a hazardous air pollutant, perchloroethylene, by as much as 70 million pounds. This month I will sign a final rule cutting hazardous coke oven emissions from steel plants by 84 to 92 percent. I have also signed proposed rules that would:

- eliminate chromium emissions from industrial process cooling towers;
- provide flexibility for States to establish their own air toxics programs under section 112(l);
- establish general provisions for all maximum achievable control technology (MACT) standards;
- establish procedures to help States make case-by-case technology air toxics decisions under section 112(j);
- and provide guidance for risk management plans and prevention programs to address accidental releases of air toxics.

When people in urban areas think about air pollution, one of the first images that comes to mind is that of the diesel bus belching out clouds of black smoke. Last March I signed a final rule that will remove over 90 percent of particulate emissions from diesel buses through a phased-in program beginning with 1994 model bus engines. I also signed final rules requiring existing diesel buses to be retrofit with cleaner technology and requiring more stringent nitrogen oxide standards for all heavy duty engines used in buses and trucks beginning in 1998. Next month new provisions will go into place nationwide requiring low-sulfur fuel to be used in diesel engines. The fuel will have 80 percent less sulfur than previously available diesel fuel, reducing sulfur particle emissions, as well as improving engine life for older diesel engines. Finally, I have signed proposed rules that will help encourage low emitting automotive fuels like compressed natural gas into the marketplace.

The Clinton Administration plans to aggressively enforce the Clean Air Act. For example, earlier this year I signed a proposed rule allowing citizens to take legal action against companies violating certain emission limits or against EPA for failing to implement certain provisions of the act. In May Attorney General Reno and I announced an $11.1 million penalty resulting from a settlement of an enforcement action against Louisiana Pacific Corporation. This is the largest penalty EPA has ever collected under the Clean Air Act and the second largest civil penalty under any environmental statute. The settlement also requires Louisiana Pacific to install new state-of-the-art controls built by American workers that will result in about 22,000 tons of reductions of volatile organic compounds, particulate matter, and carbon monoxide from 11 wood panel facilities nationwide.

These are just examples of the steps we have taken in the past seven months to implement and enforce the Clean Air Act.

Since Congress passed the Clean Air Act Amendments of 1990, EPA has issued over 150 proposed and final rules and guidance documents. When fully implemented in the year 2005, the amendments will remove an estimated 57 billion pounds of pollution from the air. To date EPA has proposed or promulgated rules that will account for 85 percent of those 57 billion pounds.

We are all cognizant that despite this tremendous progress and the diligent efforts of Agency staff, EPA has not been able to meet all of the CAA statutory deadlines. As a result, environmental groups and others have initiated lawsuits to compel the Agency to take action in those areas where we have missed congressionally mandated deadlines. The result has been a series of settlement agreements or court-ordered deadlines. This is unfortunate for two reasons. The missed deadlines means that the environmental protection occurs later than Congress intended. Also disturbing is the fact that responding to a series of court-ordered deadlines begins to take regulatory decision-making out of my hands, hampering coherent planning efforts on the Agency's part.

One of my main goals in implementing the Clean Air Act is to try to reverse this trend of missed statutory deadlines. One of the major reasons for missed deadlines is the extended regulatory review some rules received under the previous Administration. Key rules—including the rule establishing the new operating permits program, the rule proposing significant acid-rain-related nitrogen oxide reductions from utility boiler operation, and the rule proposing significant emission reduction from the chemical manufacturing industry—languished for month after month under this process. As you know, President Clinton disbanded the Council on Competitiveness and directed that changes be made to revamp the regulatory review process. EPA and the Off ice of Management and Budget (OMB) have already instituted a management working group to adopt new procedures to streamline and improve the OMB review process. We are working together to build a new and more productive relationship. Furthermore, in response to the recommendations of Vice-President Gore's National Performance Review, I will soon take steps to reform the regulatory development process within EPA itself. Both the forthcoming OMB changes and EPA reforms should expedite the rulemaking process and help end the bureaucratic gridlock that significantly slowed regulatory progress over the past few years.

Another reason for delays is that the 1990 amendments created a massive new workload for EPA. Although the budget for air programs has increased significantly, there is still an immense job ahead of us, as the following figures demonstrate. Prior to the 1990 amendments, EPA's air office issued five to eight major rules per year. Under the new law, EPA must promulgate more than 120 regulations by 1995, an average of 24 rules per year. A heavy regulatory agenda continues through the year 2000. The law also requires EPA to conduct major research programs and carry out more than 90 studies. We will be regulating 34,000 major sources of air pollution and 350,000 smaller sources, considering 120 new permit programs submitted by State and local air pollution agencies, and evaluating hundreds of State implementation plan revisions. All this work must be done in the face of budget constraints, conflicting pressures from interest groups, and scientific uncertainties concerning health and environmental risks.

As we move forward to fulfill our obligations under the Clean Air Act, there are three major goals and principles that will guide our efforts. Number one, we will greatly enhance EPA's efforts to work with State and local governments. We will build true partnerships. As more and more Federal rulemaking occurs, State and local governments bear ever greater responsibility for implementing requirements ranging from the new operating permit program to enhanced vehicle inspection-and-maintenance programs. We need to provide the training, guidance, grant money, and technical support to ensure that State and local governments can successfully assume and manage strong programs that will solve their air pollution problems. Last May I announced the establishment of a satellite downlink network to broadcast training and informational programs to almost 100 State and local air pollution control agencies around the country for a fraction of the cost of traditional training programs.

No. 2, we will seek to eliminate the adversarial nature of the rulemaking and regulatory process. An important part of public outreach efforts is to encourage consensus through broad consultation with outside parties. We must reach out to all who have an interest in and are affected by our rules and regulations. It is important to conduct regulatory negotiations, such as the one we are currently undertaking to reduce emissions of volatile organic compounds from architectural and industrial maintenance coatings. We recently established a subcommittee of the Clean Air Act

Advisory Committee to examine ways to simplify and streamline the "new source review" process under the Act while preserving the environmental benefits of the program. The Subcommittee is composed of representatives from several industries, environmental groups, States and Federal agencies, such as the National Park Service. I believe these kinds of efforts result in better rules and programs, reduce chances of legal challenge, and enhance the ability of EPA and State and local governments to achieve effective implementation of the act.

Another way to reduce controversy over rules is to have a good scientific basis for regulatory decision-making. To that end, I want to continue to promote public/private partnerships to help maximize resources and develop scientific consensus on the most effective ways to tackle persistent air pollution problems. An excellent example of this is the Southern Oxidant Study to investigate urban ozone problems in the South. EPA's contributions are more than matched by the private sector and other Federal and State agencies. Working together benefits all of us through the maximization of resources and expertise.

My third broad goal in implementing the act is to encourage pollution prevention and innovative control technologies. Where possible we will encourage solutions that set tough standards for pollution reduction, leaving the flexibility to regulated entities to devise the best means to prevent pollution. For example, our industrial process cooling tower rule eliminates chromium emissions through a change in feedstocks, not through end-of-the-pipe controls. Here are a few examples of the many new technologies under development that may contribute to cleaner air:

- AT&T: natural solvent found in cantaloupes substitutes for trichloroethylene in electronics manufacturing
- Custom Coals Corp.: new technology produces cleaner-burning coal by removing approximately 90 percent of sulfur through a combination of advanced coal cleaning and combustion techniques using additives
- Ovonic Battery Inc.: prototype nickel-metal hydride battery for electric vehicles to be produced under contract with the U.S. Advanced Battery Consortium, which includes the Big Three automakers

The Clean Air Act Amendments of 1990 have stimulated demand for pollution prevention and control technologies, and in the process have created new business opportunities and jobs in the billion-dollar air pollution control industry. We are working with the Department of Commerce and business community to identify these business opportunities. Just last week we held our second annual national conference exploring new business opportunities and markets created by the 1990 amendments. Co-sponsored by a wide variety of State, local, environmental and business associations, the conference was a great success, laying the groundwork for increased jobs and expanded exports of pollution control technologies over the next several years. We also have established a database to document the vast array of technology technological advances and new business and export ventures that have arisen since passage of the 1990 amendments.

Regulations that set firm goals for pollution reduction, but give sources flexibility on ways to comply, are the best way to encourage pollution prevention and innovative technologies. We will encourage market-based solutions, such as those that the Congress wrote into the acid rain provisions of the Clean Air Act. The emissions trading market under the program is now developing; we expect this market will provide a model for future market-based systems. Also, we are currently working with the South Coast Air Quality Management District in California to develop a trading program to cost-effectively reduce emissions of nitrogen oxides and sulfur dioxide.

In addition to encouraging pollution prevention in regulation programs, we are promoting programs that encourage companies to reduce emissions voluntarily. EPA has initiated innovative voluntary programs that reduce emissions of greenhouse gases, including carbon dioxide and methane, and other air pollutants. Three of these non-regulatory "Green Programs" promote use of energy-efficient lighting, building energy systems, and computers. Other programs will encourage reductions in emissions from natural gas transmission and distribution; assist the profitable capture of methane from coal beds during and prior to mining; and encourage steps to prevent water and air pollution from feed lot waste stored in lagoons. In each program, emissions reductions are achieved through private-public partnerships with businesses and other organizations. Organizations sign an agreement with EPA and commit to making efficiency upgrades wherever it is profitable. Assisting organizations in making profitable energy efficiency and methane reduction investments helps save million of dollars and creates thousands of jobs. The Green Programs are an example of how we are working cooperatively with the private sector to arrive at

economically attractive ways to protect the environment while improving productivity and competitiveness.

My fourth major goal is to examine the environmental justice questions associated with implementing the Clean Air Act. Many of the rules I mentioned earlier, such as those reducing air toxic emissions from dry cleaners or those reducing diesel particulates from urban buses, will greatly benefit inner city communities. I am interested in initiating other projects to identify and reduce air pollution that is disproportionately affecting the poor and people of color.

Mr. Chairman, you asked chat we identify any assumptions behind the Clean Air Act Amendments of 1990 that may have changed in light of new scientific information or our experience in implementing the act. One such issue is the role of nitrogen oxides (NO_x) in the formation of ground-level ozone. As you know, ozone is formed by the combination of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in the presence of sunlight and heat. As required by the amendments, EPA in conjunction with the National Academy of Sciences has examined the role of NO_x. The Academy reported and EPA agrees that NO_x control is necessary for effective reduction of ozone in many areas, and that NO_x control should be emphasized more than it has been under past EPA strategy. The amendments require that area-specific and regional analyses using photochemical grid models be used to assess the effectiveness of alternative control strategies in the more polluted areas of the country. As these data become available, EPA plans to encourage and support efforts to address mid-course corrections to State implementation plans in ozone nonattainment areas. The Clean Air Act does not appear to provide EPA the flexibility to allow States to substitute NO_x controls for VOC controls in obtaining the 15 percent reductions required by the year 1996. However, we have the flexibility to allow NO_x substitution beyond that point, if necessary. In the meantime, we have already proposed or promulgated rules that will help States achieve significant reductions of both NO_x and VOCs.

Another example of "new" information since the Clean Air Act Amendments were passed is our understanding of the contribution nonroad vehicles make to air quality problems. Substantial air quality improvements can result from changes to reduce emissions from nonroad engines. EPA's landmark 1991 study found that lawnmowers, construction equipment, power boats, and other nonroad sources produce significantly more emissions than had previously been thought. The study found that operating a crawler tractor for one hour emits the same amount of ozone-forming nitrogen oxides as driving a car 900 miles. As on-highway vehicles become even cleaner over the next few years, nonroad sources could rival cars, trucks, and buses in total contribution to air pollution. This spring, EPA proposed initial regulations limiting NO_x emissions from heavy-duty diesel nonroad engines. Over the next 2 years EPA plans to propose additional standards for emissions of volatile organic compounds from small gasoline engines and marine pleasure craft engines.

In addition, Mr. Chairman, you asked that we comment on the act and how well it is being implemented by EPA, industry and States. Although we are finding it difficult to implement some provisions, discussions between congressional committees and the Agency during the legislative process have made parts of the 1990 amendments easier to implement than they would have been otherwise. As other environmental laws are revised, it is important that we continue those discussions in the future.

A key concern under all our environmental authorities has always been the issue of specificity vs. flexibility. In many respects the 1990 amendments strike an appropriate balance between the two. In general, specificity regarding health and environmental goals avoids endless fights and litigation over the goals themselves. At the same time, EPA and sources should be given flexibility on ways to achieve these goals. This flexibility must be coupled with mechanisms for accountability to ensure that health and environmental goals are met.

It is important to note that the appropriate balance between specificity and flexibility must be determined on a case-by-case basis, focusing on the particular problem and circumstances. For example, in the case of sulfur dioxide controls to, reduce acid rain, it was possible to be specific about the environmental goal because of widespread agreement on a 10-million-ton reduction in sulfur dioxide emissions. With that goal clearly established, it was possible to give sources flexibility on compliance options through a market-based emissions allowance system with continuous emissions monitoring to ensure that reductions are achieved.

Another consideration in determining the appropriate amount of flexibility is that many companies—but not all—can be expected to work constructively with EPA to develop a regulation that will achieve environmental goals. As we implement the

act, many companies have come to us to suggest ways a regulation can be designed for both implementation flexibility and environmental results. For example, the proposed equipment leaks standard for synthetic organic chemical manufacturing and other industries was the product of a regulatory negotiation. The proposal relies first on incentives, and only later on sanctions, to encourage compliance. In return for the incentive system, industry was willing to support a more stringent performance level for leak prevention. Companies also have constructively worked with EPA on acid rain control regulations. A group of Midwestern electric utilities actively helped us design the necessary monitoring system. A third example of industry wording cooperatively with EPA is the Design for the Environment Printing Project. This project is intended to help the graphic communications industry make environmentally responsible product and technology choices by providing analytical tools and information on alternatives. The project is administered by the Office of Prevention, Pesticides and Toxic Substances.

On the other hand, EPA has found in implementing the act that a few companies have sought to take advantage of statutory leeway to minimize the level of control required by a regulation, rather than to incorporate flexibility on ways to achieve the act's goals. Because there is typically disagreement on minimum acceptable control levels, this tactic has made discussions more difficult for all concerned and has hampered the Agency's efforts to build consensus over a draft regulation. Statutory provisions with clear goals and clear but not prescriptive control requirements can reduce the opportunity for such problems to develop.

As requested, I would like to note briefly examples of State and local agencies that have done a good job in implementing certain aspects of the Clean Air Act to date. Kansas and Missouri were the first States to obtain redesignation of an ozone nonattainment area to attainment status under the provisions of the 1990 amendments. The Kansas City metropolitan area was eclassified to attainment in July 1992 after both States fully complied with the relevant requirements, including submittal of a plan to maintain air quality for 10 years. The key to this success was a cooperative effort involving citizens, business community leaders, public officials, the metropolitan regional council, two State and three local air agencies, and regional EPA staff.

I am pleased to commend the initiative taken by several States to pass legislation early—in 1991 or 1992—for the title V operating permits program. The efforts of Florida, Rhode Island, Georgia and Missouri are good examples. EPA Regional Offices are working with all of the States to develop fully approvable programs. The majority of States have now obtained some form of enabling legislation for the title V program and are in the process of developing their implementing regulations. Several States, including Georgia, Rhode Island and Wisconsin, are well on their way to submitting solid programs to EPA on a timely basis.

Substantial work already has been done by the Northeast Ozone Transport Commission, which was created by the act to reduce regional ozone pollution. The commission includes the governors of the 12 member States—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia and Vermont—and the Mayor of the District of Columbia. In 1992, the commission adopted an overall integrated mobile source control strategy that includes enhanced inspection and maintenance programs, reformulated gasoline, transportation control measures, and low emission vehicles. In May 1993, the commission kicked off a 16-month regional campaign to educate the public on the impact that motor vehicles have on public health and air quality. The commission also is investigating regional NO_x control strategies.

In conclusion, Mr. Chairman, you asked us to assess the performance of Congress, EPA industry and States in implementing the act. We have laid out for you some observations that we hope you will find constructive. I am pleased to report that overall, the act appears to be working pretty well. Inaddition, I want to reiterate my commitment to improving the Agency's track record on meeting regulatory deadlines.

Mr. Chairman, I look forward to working with you and other members of the Committee as we continue to undertake the enormous challenge of bringing clean air to the American people. I will be happy to answer any questions that you may have.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 18 1994

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

Honorable Max Baucus
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed for insertion into the hearing record are the responses from Carol M. Browner, Administrator, U.S. EPA, to follow-up questions from the September 23, 1993 oversight hearing on implementation of the Clean Air Act Amendments of 1990 before the Committee on Environment and Public Works. I hope this information will be useful to you and members of the Committee.

If you or your staff have any questions regarding this information, please contact Mary Nichols, Assistant Administrator for the Office of Air and Radiation at (202-260-7400).

Sincerely,

Robert W. Hickmott
Associate Administrator

Enclosure

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EPA's Responses to Follow-Up Questions from the September 23rd
Hearing on Clean Air Act Implementation
Senator Frank R. Lautenberg

Q1. A recent article in Newsweek magazine suggests that we've made so much progress in reducing air pollution that additional restrictions may be unnecessary.

Do you agree?

A. No. It is true that levels of some pollutants have decreased over time and that this is the result of the emission control programs over the past several years. It is also true that ozone exceedances this past summer (based on currently available data)--both number and magnitude--were fewer than past summers; this can probably be attributed to several important factors, such as control programs which reduce certain ozone precursors (i.e., compounds that react in the presence of sunlight to produce ground-level ozone), and favorable meteorological conditions during this period.

Under the framework laid out under the Clean Air Act Amendments of 1990, reductions in ozone levels are anticipated over the next several years. All marginal areas, for example, are expected to meet the ozone standard by November 1993 and all other areas are expected to experience reductions in violations until they meet the standards ("moderate" areas by 1996, "serious" areas by 1999, etc.). Nonetheless, most areas that are designated nonattainment for ozone and that are classified serious, severe or extreme are still measuring exceedances of the ozone standard and therefore additional control programs, such as those required under the CAA, will still be needed to ensure continued progress toward attainment of the ozone standard. In addition, once the standard is attained, the reductions must be maintained to assure that air quality continues to meet the standard.

Can New Jersey ever achieve clean air without reduced emissions from automobiles and reductions in pollution from neighboring states?

Preliminary air quality modeling performed by EPA (i.e., Regional Oxidant Modeling, or ROM) shows that New Jersey's high ozone concentrations are partially caused by ozone and precursors that are transported by the wind from states upwind of New Jersey. Therefore, upwind states' emissions will have to be reduced before New Jersey can demonstrate that it has attained the ozone standard.

New Jersey has done an extensive job of regulating stationary sources. Early indications are that insufficient reductions would be available from point sources since mobile sources make up approximately 43 percent of the volatile organic compound (VOC) emission inventory compared to 28 percent for stationary sources. Therefore, New Jersey will need to obtain reductions from mobile sources to attain the ozone standard.

What impact has the Northeast Ozone Transport Commission had on reducing smog?

The OTC is serving to coordinate the preparation of state implementation plans (SIPs) that are required to demonstrate that emission reduction measures adopted by the States will achieve the ozone (or smog) standard. Attached is a report of the accomplishments of the OTC toward that goal. These accomplishments comprise a set of resolutions and memorandums of agreement concerning the emission control approaches generally agreed to by the constituent States. We believe that the OTC must play a vital part in equitably distributing the burden of emission reductions among the States in the Northeast to ensure that the ozone standard is achieved in a timely and equitable manner.

Do you see the Commission as a model for addressing regional air transport issues?

Yes. Other areas in the country that are dealing with ozone transport will have to jointly assign responsibility for emission reductions from the States involved. A transport commission may be the most efficient way of dealing with these kinds of issues. Similar but less formal mechanisms, such as the Lake Michigan Air Directors' Consortium (LADCO), may also serve this function.

(See attachment).

Q2. **A number of states like New Jersey have adopted the California car standards over the objections of the auto industry. But EPA has generally been silent in this fight.**

Why hasn't EPA taken a position to support states to adopt the California car standards?

A. In recent months EPA has taken a number of actions supportive of the efforts by states to consider whether they should adopt California standards.

These activities have included responding to requests by Massachusetts for information on the effects of differences in fuel sulfur levels, revising EPA's cross-border sales policy at the request of New York to lessen the potential economic impact of the adoption of California standards on car dealers, and responding to New York and Texas requests for EPA's views on various legal issues pertaining to adoption of the California program.

The Department of Justice on behalf of EPA filed an amicus curiae brief in the suit, Motor Vehicle Manufacturers Association vs. New York Department of Environmental Conservation, currently pending before the United States Court of Appeals for the Second Circuit. The purpose of this brief is to provide the court with the opinion of the Federal Government on a number of issues in the case.

EPA will continue to provide states with technical and legal assistance as appropriate.

ATTACHMENT TO SEN. LAUTENBERG'S QUESTION NO. 1

ACTIONS OF THE OZONE TRANSPORT COMMISSION:

MEMORANDUMS OF UNDERSTANDING

MOU91-1 MEMORANDUM OF UNDERSTANDING dated 7/16/91 among the States Within the Ozone Transport Region (regarding motor vehicle emissions and assessment of the California Low Emission Vehicle Program.)

MOU91-2 MEMORANDUM OF UNDERSTANDING dated 10/29/91 regarding the California Low Emission Vehicle Program.

MOU91-3 MEMORANDUM OF UNDERSTANDING dated 10/29/91 regarding the Federal Reformulated Gasoline Program.

MOU92-1 MEMORANDUM OF UNDERSTANDING dated 3/10/92 regarding Implementing an Integrated Mobile Source Strategy.

MOU92-2 MEMORANDUM OF UNDERSTANDING dated 3/10/92 regarding the Need to Reduce Stationary Source NOx Emissions and Activities to Develop Technical Support for Regulatory Development.

MOU93-1 MEMORANDUM OF UNDERSTANDING dated 5/18/93 regarding Intrastate NOx Emission Offset Trading Programs.

MEMORANDUM OF UNDERSTANDING
AMONG THE
STATES WITHIN THE OZONE TRANSPORT REGION

WHEREAS the northeastern United States is faced with a severe and widespread ozone nonattainment problem; and

WHEREAS most of the member states also have carbon monoxide nonattainment problems; and

WHEREAS motor vehicles are the largest source of ozone producing pollutants and emit the vast majority of the carbon monoxide emissions; and

WHEREAS motor vehicle emissions are projected to increase significantly during the 1990's unless new motor vehicle control measures are implemented; and

WHEREAS a preliminary analysis indicates that complete implementation of the California Motor Vehicle Control Program in the transport region will result in substantially greater emission reductions than provided by the current, or expected future, Federal Motor Vehicle Control Program; and

WHEREAS Section 177 of the Clean Air Act gives states the option of adopting vehicle emission standards identical to California's stringent exhaust standards; and

THEREFORE, each of the member states and the District of Columbia recognizes the need to reduce mobile source emissions in order to effectively address the current and future ozone and carbon monoxide problems in the Northeast. Furthermore, the undersigned support the California Motor Vehicle Control Program and call for the states and the District to cooperatively evaluate the feasibility, air quality benefits, and associated costs of adopting this program in the Ozone Transport Region; and

FURTHER, the undersigned states and the District of Columbia also agree that the use of federal reformulated gasoline throughout the Ozone Transport Region will provide significant additional benefits in emission reductions, and agree to consider requesting the sale of these fuels on a regional basis.

Signed this 16 day of July, 1991 by the following:

CONNECTICUT: [illegible]

DELAWARE: [illegible]

DISTRICT OF COLUMBIA: [illegible]

MAINE: [illegible]

MARYLAND: [illegible]

MASSACHUSETTS: [illegible]

NEW HAMPSHIRE: [illegible]

NEW JERSEY: [illegible]

NEW YORK: [illegible]

PENNSYLVANIA: [illegible]

RHODE ISLAND: [illegible]

VERMONT: [illegible]

VIRGINIA: [illegible]

MEMORANDUM OF UNDERSTANDING
AMONG THE STATES IN THE OZONE-TRANSPORT COMMISSION
ON THE CALIFORNIA LOW EMISSION VEHICLE PROGRAM

WHEREAS, the Northeastern United States is faced with a severe and widespread long-term ozone nonattainment problem; and

WHEREAS, most of the member states also have carbon monoxide nonattainment problems; and

WHEREAS, motor vehicles are the largest source of ozone-producing pollutants and air toxic pollutants as well as emit the vast majority of the carbon monoxide emissions; and

WHEREAS, a NESCAUM analysis indicates that implementation of the California Low Emission Vehicle Program in the Northeast United States will result in substantially greater reductions in hydrocarbon, nitrogen oxides, carbon monoxide, and air toxic emissions than provided by the current or expected future federal motor vehicle control program; and

WHEREAS, Section 177 of the 1990 Clean Air Act Amendments provides states with the option of adopting vehicle emission standards identical to California's stringent exhaust standards; and

WHEREAS, the U.S. Environmental Protection Agency has, in recognition of the severe ozone problem in the Northeastern United States, expressed support for the adoption of the California Low Emission Vehicle Program as an element of an attainment and maintenance strategy by the states in the ozone transport region.

THEREFORE, each of the undersigned member states recognizes the need to reduce mobile source emissions as a means of effectively addressing the current and future ozone, carbon monoxide, and air toxics problems in the Northeast; and

FURTHERMORE, each of the undersigned member states agrees to propose regulations and/or legislation as necessary to adopt light duty motor vehicle emission standards identical to those in California's Low Emission Vehicle Program effective as soon as possible in the ozone transport region and in accordance with Section 177 of the 1990 Clean Air Act Amendments; and

FURTHERMORE, the undersigned member states recognize the benefits of regional consistency and will strive to coordinate the implementation and administration of this program.

Signed this day of , 1991 by the following:

CONNECTICUT: _____

DELAWARE: _____

DISTRICT OF COLUMBIA: _____

MAINE: _____

MARYLAND: _____

MASSACHUSETTS: _____

NEW HAMPSHIRE: _____

NEW JERSEY: _____

NEW YORK: _____

PENNSYLVANIA: _____

RHODE ISLAND: _____

VERMONT: _____

VIRGINIA: _____

MEMORANDUM OF UNDERSTANDING
AMONG THE STATES IN THE OZONE TRANSPORT COMMISSION
ON OPTING IN TO THE FEDERAL REFORMULATED GASOLINE PROGRAM

WHEREAS, Section 219 of the Clean Air Act Amendments of 1990 requires the Environmental Protection Agency (EPA) to promulgate regulations by November 15, 1991, requiring EPA to establish a reformulated gasoline program for the nine areas of the country with the worst ambient ozone problems, including Baltimore, Hartford, New York and Philadelphia;

WHEREAS, the reformulated gasoline program will require refiners to produce gasoline that achieves reductions in volatile organic compounds and air toxics of at least 15 percent by January 1, 1995, and 25 percent by January 1, 2000;

WHEREAS, the Clean Air Act Amendments of 1990 allow all other ozone nonattainment areas in the country to opt in to the reformulated gasoline program;

WHEREAS, EPA recently convened a successful regulatory negotiation to assist in the development of regulations for the reformulated gasoline program;

WHEREAS, representatives of all affected parties -- including state and local air quality agencies, industry (oil and automobile) and environmental groups -- unanimously supported the agreement reached through the regulatory negotiation;

WHEREAS, the significant environmental benefits associated with the reformulated gasoline program -- reductions in ozone precursors and air toxics -- will be realized immediately upon implementation of the program;

WHEREAS, the reformulated gasoline program will result in a relatively low cost to the consumer, ranging from one-half cent per gallon to five cents per gallon;

WHEREAS, the procedure for opting in to the reformulated gasoline program is a simple one, requiring only that the Governor of a state with one or more ozone nonattainment areas transmit a letter to the EPA Administrator;

WHEREAS, on September 24, 1991, the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials adopted a resolution calling upon all states in the country that include an ozone nonattainment area to opt in to the federal reformulated gasoline program; and

WHEREAS, the states of Maine, Massachusetts, Pennsylvania and Rhode Island, New Hampshire, Connecticut, Virginia have already opted in to the federal reformulated gasoline program.

THEREFORE, the undersigned members of the Ozone Transport Commission agree to opt in to the federal reformulated gasoline program for nonattainment areas within the ozone transport region as soon as possible.

Signed this 22 day of November , 1991 by the following:

CONNECTICUT: ______________________

DELAWARE: ______________________

DISTRICT OF COLUMBIA: ______________________

MAINE: ______________________

MARYLAND: ______________________

MASSACHUSETTS: ______________________

NEW HAMPSHIRE: ______________________

NEW JERSEY: ______________________

NEW YORK: ______________________

PENNSYLVANIA: ______________________

RHODE ISLAND: ______________________

VERMONT: ______________________

VIRGINIA: ______________________

MEMORANDUM OF UNDERSTANDING AMONG THE STATES OF THE OZONE TRANSPORT COMMISSION ON IMPLEMENTING AN INTEGRATED MOBILE SOURCE STRATEGY

WHEREAS, the Northeastern United States is faced with a pervasive ozone nonattainment problem; and

WHEREAS most of the member states also have carbon monoxide nonattainment problems; and

WHEREAS motor vehicles are the largest source of ozone precursors and toxic pollutants and emit as well the vast majority of the carbon monoxide emissions; and

WHEREAS regional ozone modeling to date by the U.S. Environmental Protection Agency has shown the need for greater reductions of VOC and NOx emissions for the purposes of reducing ambient ozone concentrations; and

WHEREAS motor vehicle emissions are directly related to vehicle design, the fuels used, the quality of maintenance performed, and the vehicle miles traveled (VMT);

WHEREAS motor vehicle control strategies need to work together to effectively reduce the formation of ground level ozone;

THEREFORE, each state recognizes the need for implementing an integrated mobile source control strategy which focuses on minimizing all types of motor vehicle emissions and

Furthermore, that each state take steps to implement as soon as possible the following cost effective strategies as needed to attain and maintain the ambient ozone standard through the Ozone Transport Region:

- the new vehicle emissions standards of the California Low Emission Vehicle program (see OTC memorandum of understanding of 10/29/91);
- enhanced I/M programs where required by the Clean Air Act Amendments;
- reformulated gasoline (see OTC resolution of 10/29/91); and
- appropriate transportation control measures to limit VMT in metropolitan areas in the OTC region; and

Furthermore, that each state recognizes that the strategies outlined above together will maximize the emission reductions achievable from mobile sources as one part of an overall strategy for ozone attainment.

Signed this 10th day of March, 1992 by the following:

CONNECTICUT: Timothy R. C. Kenny

DELAWARE: Edwin H. Clark, II

DISTRICT OF COLUMBIA: _____

MAINE: Dean C. Marden

MARYLAND: Bob Perciasepe

MASSACHUSETTS: Susan F. Tierney

NEW HAMPSHIRE: Robert W. Varney

NEW JERSEY: Scott A. Weiner

NEW YORK: Thomas C. Jorling

PENNSYLVANIA: Catherine W. Cowen

RHODE ISLAND: Leslie Hughes

VERMONT: Jan S. Eastman

VIRGINIA: Elizabeth H. Haskell

OTC MEMORANDUM OF UNDERSTANDING ON THE NEED TO REDUCE STATIONARY SOURCE NOx EMISSIONS AND ACTIVITIES TO DEVELOP TECHNICAL SUPPORT FOR REGULATORY DEVELOPMENT

WHEREAS the ambient ozone nonattainment problem is pervasive across the northeastern United States; and

WHEREAS the Clean Air Act Amendments of 1990 require NOx Reasonably Available Control Technology (RACT) control regulations in the Ozone Transport Region (OTR) be submitted in SIP revisions by November 15, 1992, with compliance no later than May 1995; and

WHEREAS the Clean Air Act Amendments of 1990 also require SIP revisions including an ozone attainment demonstration be submitted by November 15, 1994, with compliance dates no later than May 1999; and

WHEREAS parts of the OTR have attainment dates as early as 1996 and 1999; and

WHEREAS the December 1991 report on urban ozone by the National Academy of Sciences concluded that there is a need for NOx control in many of the urban areas of the U.S.; and

WHEREAS the modeling simulations performed to date by the U.S. Environmental Protection Agency using the Regional Oxidant Model (ROM) demonstrate the efficacy of NOx control for reducing ozone formation in the OTR; and

WHEREAS there are significant contributions to NOx emissions from both stationary and mobile sources; and

WHEREAS reasonable controls on both stationary and mobile sources of NOx will be necessary for the long-term attainment and maintenance of the ambient ozone standards; and

WHEREAS the OTC has already acted to endorse mobile source control strategies which will reduce the mobile source NOx emission contribution; and

WHEREAS studies by EPA and others have shown that combustion modifications are available and have the potential to provide cost effective NOx emissions reductions at stationary fuel combustion sources; and

WHEREAS additional add-on control technology beyond combustion modifications will be necessary to ensure attainment of the ozone standard in the OTR;

THEREFORE, be it resolved that each of the undersigned member states will proceed with the development of regulations related to RACT requirements based on combustion modifications for significant stationary source categories of NOx for implementation by May 1995; and

Furthermore, that the OTC should in cooperation with the U.S. Environmental Protection Agency continue modeling simulations using ROM and the Urban Airshed Model to investigate the additional amount of NOx reduction necessary to provide attainment of the ambient ozone standard across the OTR; and

Furthermore, additional controls capable of meeting a performance standard based on advanced control technology will be incorporated in 1994 SIP revisions for implementation by May 1999, as needed to attain and maintain the ambient standard for ozone throughout the OTR.

Signed this 10th day of March, 1992 by the following:

CONNECTICUT: Timothy R.E. Keeney

DELAWARE: Edwin H. Clark, II

DISTRICT OF COLUMBIA: Ferial A. Bishop

MAINE: Dean C. Marden

MARYLAND: Bob Perciasepe

MASSACHUSETTS: Susan J. Tierney

NEW HAMPSHIRE: Robert W. Varney

NEW JERSEY: Scott A. Weiner

NEW YORK: Thomas C. Jorling

PENNSYLVANIA: Catherine W. Cowan

RHODE ISLAND: Louise Durfee

VERMONT: Jan S. Eastman

VIRGINIA: Elizabeth H. Haskell

MEMORANDUM OF UNDERSTANDING
AMONG THE STATES OF THE OZONE TRANSPORT COMMISSION
ON INTRASTATE NOx EMISSION OFFSET TRADING PROGRAMS

WHEREAS new source review requirements of Title I of the Clean Air Act require NOx offsets of emissions for new major sources and major modifications in the Ozone Transport Region (OTR); and

WHEREAS the Ozone Transport Commission (OTC) wants to ensure that the jurisdictions of the OTC meet the statutory requirements of the Clean Air Act while enhancing the opportunities for economic growth and environmental protection in the OTR; and

WHEREAS it is desirable for new sources to have access to a ready supply of emission offsets to ensure the required emission reductions are more than equal to the emissions of the new sources; and

WHEREAS expanding the area of potential offsets should enhance both supply and accessibility of offsets for new major sources and major modifications; and

WHEREAS the OTR has been created by statute as a distinct air quality planning region for control of ground level ozone; and

WHEREAS offset programs can and must be designed with long term attainment and maintenance of the National Ambient Air Quality Standards in mind; and

WHEREAS the OTC recognizes the concept that a series of intrastate trading programs with common elements within the OTR can expand the creation of and the availability of offsets under certain conditions; and

WHEREAS the OTC members agree that each intrastate NOx emission offset trading program has the potential for creating greater air quality benefits than would occur in the absence of a NOx emission offset trading program;

THEREFORE, the OTC supports the development of intrastate NOx emission offset trading programs and policies that provide compatibility with the possible future development and implementation of an interstate NOx emission offset trading program; and

FURTHERMORE, the parties to this Memorandum of Understanding (MOU) agree that each member jurisdiction may engage in emission trading with other jurisdictions prior to the development of an OTC interstate NOx emission offset trading program consistent with the requirements of the Clean Air Act; and

FURTHERMORE, the parties to this MOU agree to continue to cooperate to make their individual offset programs compatible; and

FURTHERMORE, the parties to this MOU agree that to the greatest extent practicable their individual intrastate emission trading programs shall reflect the attached common elements.

Signed this 18th day of May, 1993 by the following:

CONNECTICUT: Timothy R. E. Keeney

DELAWARE: Gary A. Tyler

DISTRICT OF COLUMBIA: _____

MAINE: Dean C. Marrow

MARYLAND: Bob Perciasepe

MASSACHUSETTS: Trudy Coxe

NEW HAMPSHIRE: Robert W. Varney

NEW JERSEY: Scott A. Weiner

NEW YORK: Thomas C. Jorling

PENNSYLVANIA: Catherine W. Cowan

RHODE ISLAND: Lonnie T. Wylie

VERMONT: Chuck Clarke

VIRGINIA: _____

Common Elements of a NOx Emission Offset Trading Program

The Ozone Transport Commission (OTC) member states[1] agree that intrastate NOx emission offset trading programs should result in greater air quality benefits and economic opportunity than would otherwise occur in the absence of a such a trading program.

1. Information - Creation of a common commodity, in this case emission reduction credits, will facilitate both intrastate and interstate trading programs in the Ozone Transport Region (OTR). Thus, the OTC members should require the submission of certain data elements on all applications for creation of emission reduction credits. The collection of certain common data will provide uniformity and consistency throughout the OTR and is an important step towards implementing an interstate trading program for emission reduction credits.

2. Calculation Procedure - Another step towards developing a uniform and consistent emission reduction credit trading program is to create a set of common procedures for quantifying the amount of an emission reduction credit. The OTC member states should use the same calculation procedures so as to provide certainty in the amount of emission reductions that an emission reduction credit represents. The OTC member states should recognize the initial amount (prior to adjustments and certification) of an emission reduction credit throughout the OTR if such calculation procedures are used.

3. Certification Process and Regional Registry - The third element in establishing a uniform and consistent emission reduction credit trading program is the establishment of a common certification process. The OTC member states should use a common certification process which will ensure the integrity of the emission reduction credit and will provide credibility to the trading program. The common certification process should include the following.

- Certification of emission reduction credits should be subject to public comment.
- All certified emission reduction credits should be federally enforceable.
- The certificate for emission reduction credits should include at a minimum, certain common elements.

Adjustment of emission reduction credits for uncertainty should be made by the state prior to certification. Once emission reduction credits have been certified, other OTC member states should not further adjust the amount of the certified credits,

except to account for new rules which reduce allowable emissions after certification.

A regional registry should act as a regional clearinghouse. Information on all emission reduction credits certified in the OTR should be maintained and made available to all parties upon request. The regional registry should not have independent approval responsibility. It should act as a common source of information and track and record the use of emission reduction credits to ensure that there is no double counting of the credits.

4. Nature of NOx Emission Reduction Credits - The OTC members agree that NOx emission reduction credits are not property rights, but are limited authorizations to emit NOx. The status of NOx emission reduction credits is deemed to be consistent (at the state level) with the status of Allowances under Title IV of the Clean Air Act, as amended[4]. Further, the OTC members wish to emphasize the right of each state to establish a program to create emission reduction credits as described in this document.

5. Shutdowns - NOx offset credits created by 1) the shutdown of a facility, or 2) the shutdown of sources or equipment within a facility may be limited by intrastate program rules. Such program rules may allow each state to either control how and where persons use NOx offset credits or to retain credits for other uses by the state. This policy encourages the creation of NOx offset credits that are the result of increased control of emissions, pollution prevention initiatives, raw material changes and other actions that go beyond existing regulatory requirements, rather than emission reductions resulting from production adjustments or curtailment.

6. State-controlled or State-banked Emission Reduction Credits - The members of the OTC acknowledge that each state has its own State Implementation Plan for air quality, and that each state has its own unique strategy, consistent with the overall goals of the OTC, to address the ozone problem. Individual state policies may involve varying degrees of participation by each state in market-based programs for the control of ozone. With respect to the ability of member jurisdictions to generate emission reduction credits, member jurisdictions have the same authorities and are subject to the same limitations as other entities. A member jurisdiction may use the emission reduction credits generated within their jurisdiction to foster economic development or to make reasonable further progress (RFP) toward attainment of the National Ambient Air Quality Standard (NAAQS).

7. Non-prohibition of Interstate Trading - Members of the OTC should craft their NOx offset banking and trading rules so that each state's intrastate trading rules do not prohibit interstate trading of emission reduction credits.

8. Standard Principles - The rules of the OTC member states should be based on the following principles:

- Any generation, exchange, or use of emission reduction credits shall be conducted in accordance with applicable guidelines promulgated by the United States Environmental Protection Agency (EPA) (see attachment).

- Emission reduction credits may be used for any purposes authorized under the rules of the receiving jurisdiction, subject to the guidelines referenced above.

9. Amount of Emission Reduction Credits Over Time - At the time of their certification, the OTC member states should fix the quantity of emission reduction credits except as provided for below. Any member jurisdiction may, at such time and in accordance with its rules, retain a portion of the credits for its own use. For credits created from the shutdown of sources, the member jurisdiction may retain the entire quantity for its use, either in full upon their creation or through reducing the quantity held by the generating source over time.

Prior to the use of emission reduction credits, the member jurisdiction in which the generating source is located should adjust the quantity of the emission reduction credits to account for the effect on the generating source of rules adopted subsequent to the generation of the credits.

In addition, as a strategy to make reasonable further progress (RFP) toward the National Ambient Air Quality Standard (NAAQS) for ozone, a member jurisdiction may adopt a policy of decreasing, by a percentage per year or other time period, the quantity of all the certified emission reduction credits. Such a decrease would not apply to credits that have been used or approved for a specific use.

10. Intersector Trading - Emission reduction credits generated from reductions in emissions from mobile, off-road, and area sources shall be eligible for interstate trading, so long as those reductions are beyond any required pursuant to federal laws or regulations and applicable provisions of a State Implementation Plan (SIP).

In cases where the emission reduction credits are from mobile, off-road, and area source reductions of limited duration, the emission reduction credits shall be applied against corresponding temporary emission reduction needs.

11. Enforcement - Enforcement by the OTC member jurisdictions shall be based on the following principles.

- Any emission reductions utilized for emission reduction credits that are traded between member jurisdictions or

between nonattainment areas, or both, shall be federally enforceable.

- Interstate trading of emission reduction credits and the appropriate use of credit traded between states/districts shall be subject to enforcement by the United States Environmental Protection Agency (EPA).

- A member jurisdiction shall be responsible for sources located within its jurisdiction for enforcing any emission reductions used to generate emission reduction credits.

- A member jurisdiction shall be responsible for new and altered sources being constructed in the jurisdiction, and for enforcing the appropriate application of emission reduction credits against the emission increases from the new and altered sources.

End notes:

1. Throughout this paper reference to "states" or OTC member "states" includes reference to the District of Columbia

2. See 42 U.S.C. 7651b(f), (Pub. L. 101-549) CAAA, Title 4, Sec. 403 (f).

ACTIONS OF THE OZONE TRANSPORT COMMISSION:

RESOLUTIONS

RES91-1 RESOLUTION dated 7/16/91 on Enhanced Vehicle Inspection and Maintenance.

RES91-2 RESOLUTION dated 7/16/91 concerning Support Requested from EPA (regarding Title V permit programs, and Federal grants.)

RES91-3 RESOLUTION dated 7/16/91 concerning EPA's Proposed Operating Permit Program (regarding the contents of EPA's permit programs.)

RES91-4 RESOLUTION dated 7/16/91 concerning Permit Fees for Stationary Sources.

RES91-5 RESOLUTION dated 7/16/91 concerning Fees for Mobile Sources.

RES92-1 RESOLUTION dated 3/10/92 Supporting Enhanced Motor Vehicle Emissions Inspection and Maintenance Programs and Calling on U.S. EPA for Appropriate Guidance.

RES92-2 RESOLUTION dated 10/20/92 Supporting the Control of Nitrogen Oxides and Calling for Assistance and Flexibility for Promoting Effective Control Plans for the OTR.

RES93-1 RESOLUTION dated 1/8/93 Urging EPA and Other Organizations to Develop in Partnership with the Commission Programs to Upgrade and Assist Motor Vehicle Service Technicians in Performing Proper Emission Control Maintenance in Support of Enhanced I/M Programs.

RES93-2 RESOLUTION dated 1/8/93 Supporting EPA in its Development of Regulations Controlling Emissions of Ozone Precursors from Non-Road Engines.

Ozone Transport Commission
Resolution on
Enhanced Vehicle Inspection and Maintenance

WHEREAS, motor vehicles represent the dominant source of air pollution in the Northeast Ozone Transport Region;

WHEREAS, in-use compliance with mobile source standards is heavily dependent upon the proper maintenance and operation of the motor vehicle fleet;

WHEREAS, there has been a substantial investment made in the development of automobile emission control technology over the past 20 years;

WHEREAS, the Clean Air Act Amendments of 1990 require all metropolitan statistical areas that have a population of 100,000 or more and are located in an ozone transport region to implement enhanced motor vehicle inspection and maintenance (I/M) programs;

WHEREAS, enhanced I/M programs will result in substantial reductions in motor vehicle emissions in the short-term, which will be instrumental in assisting all of the states in the Northeast Ozone Transport Region attain the ozone and carbon monoxide health standards as well as meet the annual progress requirements mandated by the Clean Air Act Amendments of 1990;

WHEREAS, enhanced I/M programs -- for which technology is already available -- can be far more cost-effective than many other control strategies;

WHEREAS, studies indicate that centralized I/M programs can achieve, in a more cost-effective manner, greater reductions in emissions of hydrocarbons, carbon monoxide, nitrogen oxides, and air toxics than decentralized I/M programs; and

WHEREAS, Congress has called upon the U.S. Environmental Protection Agency (EPA) to develop a performance standard for enhanced I/M that is based on computerized emission analyzers, repair waivers if the cost exceeds $450, enforcement through vehicle registration, annual emissions testing, a centralized program or equivalent, and onboard diagnostics, and that will reduce both NOx and hydrocarbon emissions.

NOW, THEREFORE, BE IT RESOLVED that the Northeast Ozone Transport Commission urge the EPA to develop a Performance Standard which represents the best I/M program currently in place with the addition of evaporative system pressure test for all urbanized areas within the Northeast metropolitan corridor.

BE IT FURTHER RESOLVED that, if emerging technologies such as I/M 240 and other transient test procedures, as well as purge evaporative testing, are demonstrated to be practical in the inspection station environment, EPA should incorporate the benefits of these technologies into the enhanced I/M program when establishing the performance standard.

FINALLY, BE IT FURTHER RESOLVED that, if such a performance standard results in the need for existing decentralized I/M programs to convert to centralized programs, affected state and local agencies should be provided with the maximum flexibility permitted by law to phase in such centralized enhanced I/M programs.

RESOLUTION PASSED 7/16/91

7/16/91

RESOLUTION OF THE
OZONE TRANSPORT COMMISSION

CONCERNING
SUPPORT REQUESTED FROM EPA

WHEREAS, the Northeastern United States is faced with a regionwide ozone nonattainment problem; and

WHEREAS, the Congress of the United States of America, in recognition of the ozone problem in the northeastern United States, created, by the Clean Air Act Amendments of 1990, the Ozone Transport Region and established an Ozone Transport Commission to assess the degree of interstate transport of ozone throughout the region and to assess and recommend strategies to ensure that applicable State Implementation Plans provide for attainment; and

WHEREAS, the Clean Air Act Amendments of 1990 impose significant additional air pollution control requirements throughout the ozone transport region including controls on stationary sources of air pollution; and

WHEREAS, all member states and the District of Columbia must retain additional staff to meet the requirements of the Clean Air Act Amendments of 1990; and

WHEREAS, the Clean Air Act Amendments of 1990 create a new national permit program under the provisions of Title V that imposes specific minimum fees on emissions from all stationary sources; and

THEREFORE BE IT RESOLVED, that the U.S. Environmental Protection Agency act expeditiously in the finalization of its permit regulations, in which a fee structure is required, and that the member states and the District of Columbia agree to move as expeditiously as possible to obtain any legislative authority needed to adopt fee requirements for stationary sources to provide for the development of consistent stationary source programs in each state and the District.

FURTHER, that additional 105 grant support is requested during the period in which the states will be developing and implementing their permit programs through 1995.

BE IT FURTHER RESOLVED, that the Federal/State Assignee Program be reestablished as expeditiously as possible to assist the states and District of Columbia in the development and implementation of the Clean Air Act requirements of 1990.

RESOLUTION PASSED 3/16/91

RESOLUTION OF THE
OZONE TRANSPORT COMMISSION

CONCERNING
EPA'S PROPOSED OPERATING PERMIT PROGRAM

WHEREAS, stationary sources contribute at least 25% of the hydrocarbon (HC) and approximately 50% of the oxides of nitrogen (NO_x) emissions that form ozone in the Ozone Transport Region.

WHEREAS, EPA has proposed regulations that would require states to implement operating permit programs, and the preamble specifically states that Section 506(a) of the Clean Air Act may limit a state's ability to be more stringent unless such relates to the control of air pollution.

WHEREAS, many of the proposed requirements do not relate directly to the control of air pollution such as administrative requirements including turnaround times, frequency of reporting, "bubbling", permit shields or telemetering requirements: and, therefore, would not allow a state to be more stringent than EPA as specified in Section 116 of the Act.

WHEREAS, that proposal would interfere with a state's ability to implement its operating permit program in a way that will lead to attainment of the ozone air quality standard within the time frames specified in the Act.

NOW THEREFORE BE IT RESOLVED by the Ozone Transport Commission that the proposed EPA regulations be changed to reflect the following concerns of the Commission:

Preemption of States' Rights

The proposed permitting regulations must not preempt state authority with respect to permit requirements; but states should be allowed to be more stringent in all aspects of the permit conditions, including technical and administrative requirements.

Permit Shield

The proposal expands operational flexibility to allow any change in a source's operation that is not explicitly excluded from its operating permit. This section contradicts current state and local agency practices of the Act in a way not intended by Congress. The source should continue to be expected to comply with all applicable existing state and federal regulations whether or not they are explicitly mentioned in the permit.

Minor Permit Amendments

The proposal allows a source to provide seven days notification to the permitting authority for a minor permit amendment. This is unrealistic and places a tremendous time burden on the permitting authorities. EPA, in expecting these reviews to be completed in seven days, seriously compromises a state's ability to ensure that significant effects on air quality will not result from minor permit amendments. Preconstruction review should be required for any modification that would increase emissions above the allowable levels: this review would take much longer than seven days.

RESOLUTION PASSED 7/16/91

7/16/91

RESOLUTION OF THE
OZONE TRANSPORT COMMISSION

CONCERNING
PERMIT FEES FOR STATIONARY SOURCES

WHEREAS, the Northeastern United States is faced with a regionwide ozone nonattainment problem; and

WHEREAS, the Congress of the United States of America, in recognition of the ozone problem in the northeastern United States, created, by the Clean Air Act Amendments of 1990, the Ozone Transport Region and established an Ozone Transport Commission to assess the degree of interstate transport of ozone throughout the region and to assess and recommend strategies to ensure that applicable State Implementation Plans provide for attainment; and

WHEREAS, the Clean Air Act Amendments of 1990 impose significant additional air pollution control requirements throughout the ozone transport region including controls on stationary sources of air pollution; and

WHEREAS, all member states and the District of Columbia must retain additional staff to meet the requirements of the Clean Air Act Amendments of 1990; and

WHEREAS, the Clean Air Act Amendments of 1990 create a new national permit program under the provisions of Title V that imposes specific minimum fees on emissions from all stationary sources subject to Title V; and

THEREFORE BE IT RESOLVED, that the member states and the District of Columbia agree to move as expeditiously as possible to obtain any legislative authority needed to adopt fee requirements for stationary sources to provide for the development of consistent stationary source programs in each state and the District.

RESOLUTION PASSED 7/16/91

7/16/91

RESOLUTION OF THE
OZONE TRANSPORT COMMISSION

CONCERNING
FEES FOR MOBILE SOURCES

WHEREAS, the Northeastern United States is faced with a regionwide ozone nonattainment problem; and

WHEREAS, the Congress of the United States of America, in recognition of the ozone problem in the northeastern United States, created, by the Clean Air Act Amendments of 1990, the Ozone Transport Region and established the Ozone Transport Commission to assess the degree of interstate transport of ozone throughout the region and to assess and recommend strategies to ensure that applicable State Implementation Plans provide for attainment; and

WHEREAS, the Clean Air Act Amendments of 1990 impose significant additional air pollution control requirements throughout the ozone transport region including controls of mobile sources of air pollution; and

WHEREAS, all member states and the District of Columbia must retain additional staff to meet the requirements of the Clean Air Act Amendments of 1990; and

WHEREAS, no fees on the emissions of mobile sources were imposed by the Congress; and

WHEREAS, the stationary source fees may not be used to fund mobile source related programs; and

THEREFORE BE IT RESOLVED, that the member states and the District of Columbia hereby further agree to consider proposing additional new funding sources to support mobile sources programs, because they constitute a significant portion of the ozone and carbon monoxide problems in the Northeastern United States, thus providing for the development of a consistent mobile source control program in each state and the District.

RESOLUTION PASSED 7/16/91

RES92-2

RESOLUTION OF THE STATES OF THE OZONE TRANSPORT COMMISSION SUPPORTING THE CONTROL OF NITROGEN OXIDES AND CALLING FOR ASSISTANCE AND FLEXIBILITY FOR PROMOTING EFFECTIVE CONTROL PLANS FOR THE OZONE TRANSPORT REGION

WHEREAS Title I of the Clean Air Act requires that regulations for Reasonably Available Control Technology on major sources of nitrogen oxides (NOx) be submitted as State Implementation Plan (SIP) revisions by November 15, 1992; and

WHEREAS the OTC adopted a Memorandum of Understanding (MOU) on March 10, 1992, supporting the need for NOx control and committing to the 1992 NOx RACT SIP revisions; and

WHEREAS the States of the OTC are currently proceeding to adopt regulations for NOx RACT; and

WHEREAS numerous simulations by EPA using the Regional Oxidant Model (ROM) underscore the effectiveness of NOx emission reductions in controlling ground level ozone;

WHEREAS EPA is responsible for issuing guidance for States in preparation of SIP revisions under the Clean Air Act; and

WHEREAS EPA has issued guidance for some parts of the 1992 SIP revisions, but not for NOx RACT; and

WHEREAS the Ozone Transport Region (OTR) has been designated by the Clean Air Act as a special region with a distinct ground level ozone problem; and

WHEREAS some parts of the OTR have attainment dates as early as 1996;

THEREFORE, be it resolved that the OTC calls on EPA , as it develops its NOx guidance, to consider the unique status of the OTR, the results of the ROM simulations to date, and the need for substantial OTR NOx emission reductions for ozone attainment, while supporting the maximum reductions possible through the use of combustion controls; and

FURTHERMORE that the OTC calls on EPA to take into account the efforts of States of the OTC to develop effective NOx control regulations by the statutory deadline in the absence of Federal guidance and to support individual States as they finalize NOx control regulations; and

FURTHERMORE, that EPA accelerate the release of technical documentation which will assist both States and sources with the implementation of effective controls no later than the statutory compliance date of May 1995.

The resolution was approved by voice vote on October 20, 1992.

RES93-1

RESOLUTION OF THE STATES OF THE OZONE TRANSPORT COMMISSION URGING EPA AND OTHER ORGANIZATIONS TO DEVELOP IN PARTNERSHIP WITH THE COMMISSION PROGRAMS TO UPGRADE AND ASSIST MOTOR VEHICLE SERVICE TECHNICIANS IN PERFORMING PROPER EMISSION CONTROL MAINTENANCE IN SUPPORT OF ENHANCED INSPECTION/MAINTENANCE (I/M) PROGRAMS

WHEREAS an effective I/M program is critical to the success of OTC States in attaining air quality standards as required by the Federal Clean Air Act; and

WHEREAS some existing I/M programs have not achieved anticipated reductions due to ineffective vehicle maintenance programs; and

WHEREAS the quality of I/M vehicle maintenance is dependent on a combination of factors, including diagnosis and repair effectiveness, mechanic training and motivation, and quality control and support activities of governmental agencies; and

WHEREAS the success of I/M programs is dependent on the cooperation and shared responsibility of States, EPA, vehicle manufacturers, and other organizations involved with motor vehicle service; and

WHEREAS pursuant to requirements of the Clean Air Act Amendments of 1990 EPA has adopted rules and guidance for enhanced I/M programs which include a more stringent emission reduction performance standard; and

WHEREAS each of the States of the Ozone Transport Commission is required to implement enhanced I/M programs which meet this performance standard; and

WHEREAS this performance standard is based on extensive EPA studies involving advanced inspection and maintenance procedures; and

WHEREAS according to the final EPA rules, the performance standard must be met by 1999; and

WHEREAS the performance standard can only be achieved if the motor vehicle service industry attains and maintains a high standard of proficiency in the diagnosis, maintenance, and repair of current and future technology motor vehicles; and

WHEREAS attainment of this standard of proficiency is dependent upon the motivation as well as ability of the service technician to properly repair excessively emitting motor vehicles; and

WHEREAS the motor vehicle service industry including the motor vehicle manufacturers, dealerships, the gasoline marketing industry, and the independent vehicle repair industry are the primary providers of incentives necessary to improve the ability and motivation of service technicians;

WHEREAS these new requirements and programs will necessitate a rededication of all those involved with I/M programs to upgrade training, evaluation of repairs, and program quality control; and

WHEREAS EPA has begun to organize a Vehicle Maintenance Initiative (VMI) with State and local governments and the vehicle maintenance industry, an initiative which is described as a long term program to improve the availability of qualified service technicians;

WHEREAS all enhanced I/M programs will have to fully implemented by the end of 1995; and

THEREFORE, be it resolved that the OTC calls upon all organizations and businesses involved with I/M to work with the OTC States on emphasizing improving maintenance skills in preparation for implementation of enhanced I/M programs in 1995 and beyond; and

FURTHERMORE the OTC supports EPA in its development of its Vehicle Maintenance Initiative; and

FURTHERMORE the Initiative and other related industry efforts should go beyond issues related to training and certification to issues related to ongoing monitoring and evaluation of repairs in the field.

Adopted on January 8, 1993

RES93-2

RESOLUTION OF THE STATES OF THE OZONE TRANSPORT COMMISSION SUPPORTING EPA IN ITS DEVELOPMENT OF REGULATIONS CONTROLLING EMISSIONS OF OZONE PRECURSORS FROM NON-ROAD ENGINES

WHEREAS EPA is required under Section 213 the Clean Air Act Amendments to develop regulations for the control of emissions from non-road engines if they find that emissions from these sources contribute significantly to the nonattainment of an ambient air quality standard; and

WHEREAS preliminary EPA and State inventory data to date show a potentially substantial portion of ozone precursor emissions are from non-road engines; and

WHEREAS the States of the Ozone Transport Commission are required to submit to EPA State Implementation Plan revisions which demonstrate attainment of the ambient ozone standard by November 15, 1994; and

WHEREAS projected reductions from emissions of non-road engines would enhance the ability of States to demonstrate attainment; and

WHEREAS individual States are preempted by the Clean Air Act from developing their own regulations in this regard; and

WHEREAS the regulatory negotiation process developed by EPA has shown promise as a mechanism for producing air pollution control regulations through involvement and contribution of States, industrial organizations, and other interested groups;

THEREFORE, be it resolved that the OTC supports EPA in its development of strong Federal regulations for non-road engines; and

FURTHERMORE that the OTC will support the process in every way possible, including State representation in any regulatory negotiation process that EPA initiates; and

FURTHERMORE that the OTC calls upon EPA to complete its rulemaking process by the end of 1993 so that States can rely upon these emission reductions in their November 1994 State Implementation Plan revisions.

Adopted on January 8, 1993

EPA's Responses to Follow-Up Questions
from the September 23rd Hearing
on Clean Air Act Implementation
Senator Lieberman

Q1. What is EPA doing to assist states that plan to adopt the California auto standards?

A. In recent months EPA has taken a number of actions supportive of the efforts by states to consider whether they should adopt California standards.

These activities have included responding to requests by Massachusetts for information on the effects of differences in fuel sulfur levels, revising EPA's cross-border sales policy at the request of New York to lessen the potential economic impact of the adoption of California standards on car dealers, and responding to New York and Texas requests for EPA's views on various legal issues pertaining to adoption of the California program.

The Department of Justice on behalf of EPA filed an amicus curiae brief in the suit, Motor Vehicle Manufacturers Association vs. New York Department of Environmental Conservation, currently pending before the United States Court of Appeals for the Second Circuit. The purpose of this brief is to provide the court with the opinion of the Federal Government on a number of issues in the case.

EPA will continue to provide states with technical and legal assistance as appropriate.

Q2. Would the approach of this Administration on regulatory review prevent such a situation from occurring in the future?

A. The post-agreement challenge by a committee participant was an unfortunate occurrence but this event does not, in any way, sour our position on embracing the negotiated rulemaking process when circumstances are favorable for constructive exchange of ideas. When the reformulated gasoline "Agreement in Principle" was consummated, all of the participants or their representatives were gathered at a common location. None expressed any reservation with regard to previously agreed upon principles. We proceeded on the premise that all parties had been fairly heard, accommodations were made when possible, and final mutual consensus was achieved. We can offer no remedy for a party acting in hindsight to challenge a prior agreement.

Q3. **In enacting the surface transportation legislation in 1991, this Committee was very aware of the need to provide states with financial assistance to help them implement transportation projects that will help attain clean air goals. Under the congestion mitigation and air quality program, substantial funds are given to projects aimed at long-term transportation related emissions reductions and attainment of the air quality standard.**

I'm concerned that EPA may not be playing a large enough public information and education role in how these funds can be used. For example, the air quality district for the metropolitan area of D.C., northern Virginia and suburban Maryland recently rejected--after a bitter fight-- proposals that would have required employers to reduce rush hour trips by employees through various methods, including providing shuttle buses to Metro or subsidizing car pools. One of the concerns raised centered around costs associated with implementing these programs.

It is precisely these type of programs that Congress intended be funded from congestion mitigation money under the surface transportation legislation. Did EPA attempt to educate the metropolitan area about the availability of these funds?

A. Under the provisions laid out in the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) EPA participates in the CMAQ program in a consultative role. DOT developed CMAQ implementation guidance with EPA participation and review. According to the guidance, DOT can make program funds available after consulting with EPA and determining that the program or project will contribute to the attainment of air quality standards. In addition, EPA has worked with DOT to establish an expansive policy for determining project eligibility and has provided comments on a brochure designed to reach a greater audience specifically addressing the use of congestion mitigation funds. In so far as EPA is aware, the decision not to adopt a program for trip reduction was adopted with the correct understanding of the states and metropolitan areas funding flexibilities.

Congestion mitigation funds could be used to fund expanded transit service which could then be used by employees at the affected work sites, but they cannot be used to subsidize private or corporate transportation expenses after a two-year start-up program, for example, company owned vans or the salary of in-house car pool coordinator. While Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds (23 U.S.C. § 149) are not available to cover private expenses, these funds may be used in the nonattainment areas to provide general program assistance to employers to help them plan and promote trip reduction programs. For example, if

Los Angeles established an office to encourage and provide information on vanpooling or other types of transportation management, this office could be eligible for CMAQ funds. Further, under a public/private partnership arrangement, it should be possible for a public agency to purchase vans using CMAQ funding and then lease them to a private group as part of a trip reduction program.

Since the CMAQ program is implemented at the regional, state or local level, DOT and EPA headquarters have encouraged each FHWA, FTA and EPA regional office to establish a memorandum of understanding (MOU) delineating EPA's consultative role. Most regions have completed or are actively writing such MOUs. EPA regional offices are actively involved in the review of CMAQ projects and some are on standing committees which recommend CMAQ projects and establish program priorities.

Q4. What has EPA done in response to the criticisms contained the GAO report?

A. Initially we made specific changes to address the criticisms and then performed a more thorough "redefinition" of how to complete development of the air toxics program. Based on our experience of the last couple of years, we are convinced that a strategy including early consensus building with State and local agencies, industry and environmental groups is still key for timely reductions in air toxics emissions.

Early on, we found that gathering data to develop standards for air toxics was more time consuming and complicated than we believed when the Clean Air Act was amended. Partly in response to GAO's report, we explored and adopted new ways to gather the information needed for standards development; we began searching state information and requesting information from industry earlier. We also began using more engineering judgement for industries where needed information is not available without significant expenditures of time and money.

These steps helped but still were not sufficient to complete all the standards on time. We concluded that, unless we made significant changes to the way we develop standards, extra resources would not improve the quantity nor the quality of air toxics standards. Thus, we developed and have begun implementing additional changes to improve developing air toxics standards.

These changes are based on three principles. First, we must streamline the development of individual standards whenever possible. As part of this aspect of our approach, we have begun limiting the scope of each project through "up-front" project planning. This up-front planning allows us to tailor the amount of information gathering and analysis, funding, scheduling, and regulatory development process to

the complexity of the project. In addition, we have streamlined the internal EPA review processes to reduce the number of times steps it takes to get a rulemaking published. Second, we must involve all stakeholders as early in the process as possible. This means that during our up-front planning, we begin ongoing discussion with industry, environmentalists, and states in the standard-setting process. It also means that we are working closely with states to develop implementation strategies for all the standards that will be developed. Third, we are rethinking and re-defining the role and tasks of contractors. For example, where a regulation is very narrow in scope and we can better perform the tasks in house, we are trying to do so.

We are continuing to implement these changes and are continually looking for further improvements that will allow the timely development of the air toxics program.

Q5. **Section 112(n) of the Clean Air Act Amendments requires a study on the hazards of hydrogen fluoride facilities. Friends of the Earth has raised concerns that inadequate public participation was provided for in the study process. The group informs my staff that it received a draft study with no draft findings and conclusions and then months later received draft findings with no revision of the draft study and no conclusions. The staff of the Environment and Public Works Committee met with your staff concerning this study months ago and raised several issues about the proposed study (the draft reviewed did not contain conclusions).**

Are you satisfied that full public participation was provided for in this study?

A. The report was finalized on September 30, 1993, and transmitted to the Congress. The approach taken by the Agency in preparing this report was to involve stakeholders to the maximum extent practicable to achieve a sound technical, scientific, and objective basis for the study. Stakeholders included public interest groups, industry, trade associations, academia, labor, and government entities. We met with staff of the Environment and Public Works Committee in June 1992. The issues raised by the Committee staff during this meeting were substantially addressed as a result of the subsequent technical reviews described below. We plan to brief the Committee staff on the report's findings and recommendations.

Fred Millar, representing Friends of the Earth (FOE), was involved to the same extent as all stakeholders throughout preparation of the study. NRDC and other public interest groups were also invited to participate in the process but declined to do so. The files on the HF study were made available to Fred Millar early in the study effort and, in addition, we met informally with him on at least three occasions to keep him updated. The Agency held a Roundtable meeting to solicit input on the purposes,

objectives and conduct of the study. FOE participated in this meeting. A draft of the technical portions of the study was distributed to over 100 stakeholders for their comments. Approximately 50 comments were received, including those from FOE. Furthermore, we asked the EPA's Science Advisory Board (SAB) to perform a technical review of the same draft. Fred Millar participated in the SAB's review as an invited specialty expert at the Agency's suggestion. The preliminary findings of the report were distributed to stakeholders, including FOE, and a public meeting was held to discuss these findings. FOE attended the public meeting and provided verbal comments.

The recommendations in draft form and modifications made to the draft after comments were returned were not made available to stakeholders, although a summary of modifications made to the draft was made available at the public meeting to discuss the findings. Instead, we have initiated a wide distribution of the final report to all stakeholders. At the public meeting, we agreed to consider preparation of an addendum to the report if comments warranted. As a result of the extensive public participation, we believe that the study is fair and objective, and accurately addresses the issues associated with the uses and hazards of HF.

Q6. Shouldn't EPA and the States provide pollution prevention assistance before regulations are promulgated so that small business have the time they need to comply cost-effectively or to reduce their emissions and get out of regulations altogether?

What steps is EPA taking to reach out to businesses before they are regulated?

A. Information prepared for small businesses to explain the actual requirements of new rules can not be issued in final format until the rules are actually promulgated. Industry representatives have cautioned us against the release of premature "recommendations" that may cause businesses to make changes that are obsolete by the time the rules are finalized. With respect to pollution prevention, we are attempting to disseminate all we know about pollution prevention opportunities in the material prepared for proposal of the regulations. This should enable small businesses to avail themselves of these opportunities.

The state SBAPs are being encouraged not only to provide information to small businesses on upcoming requirements, but also to become active participants in the rule development process as representatives of the small business community. For example, the North Carolina Small Business Ombudsman Office is participating in the negotiated rulemaking process for development of standards for the wood furniture manufacturing industry (North Carolina has a large population of small wood

furniture manufacturers). Activities of the wood furniture small business workgroup include not only evaluation of impacts of the rule on small businesses, but also development of educational materials for small businesses.

We are in general increasing efforts at EPA to get industry more involved, earlier in the regulatory development process. This includes more frequent meetings with groups representative of all sectors of the industry, **including the small business component.** This assists EPA in evaluating the entire industry, as well as helps us gather more accurate data on applicable pollution prevention methods and emerging technologies for the processes being regulated. Industry, in turn, is provided with up-to-date information on the status of the rule development activities and emission reduction options/methods being evaluated as soon as it becomes available. This forum also provides for the active participation by industry in the development of the standards and materials for their small business community.

The EPA has established the Federal Small Business Technical Assistance Program (Federal SBAP) to help the state SBAPs in their outreach efforts, including providing small business with information on pollution prevention methods, alternative technologies, and process changes to help reduce air pollution. This program is a cooperative effort among several existing technical assistance programs within EPA, including the Control Technology Center (CTC), and the Pollution Prevention Information Clearinghouse (PPIC). A project is currently being developed that will improve the capability of the Federal SBAP to provide pollution prevention technical assistance to the state SBAPs, and build up the basic institutional capabilities of the state programs. The EPA is also providing support to the National Roundtable of State Pollution Prevention Programs and the National Institute of Standards and Technology (NIST) for efforts aimed at improving pollution prevention assistance available to small businesses.

Q7. **EPA stated in response to follow-up questions that the Agency was "planning on developing materials to address pollution prevention alternatives for certain targeted industries."**

Has EPA prepared and distributed any of these materials yet? What sectors is EPA targeting?

A. EPA runs a set of voluntary, non-regulatory programs to increase energy efficiency and prevent pollution. These programs such as Green Lights, Energy Star Buildings, Energy Star Computers, Golden Carrot Refrigerators, distribute information to the general public and to specific industries on energy efficiency and the benefits of reducing pollution from power generation. For example, the Green Lights program,

which was launched in 1991, conducts general outreach to corporations, nonprofits, small businesses and other types of organizations, and specifically targets a number of industries including: hospitals/health care institutions, schools and universities, retail businesses, state and local governments, and the Federal Government.

In addition, EPA has a number of voluntary programs with specific industries to increase the efficiency and market penetration of certain products. The Energy Star Computers program, for example, was developed specifically with the computer industry to manufacture energy saving PCs and to date over 70 percent of the U. S. computer industry has signed voluntary agreements with EPA to produce efficient computers and printers. The Super Efficient Refrigerator Program, or the "Golden Carrot," is an initiative to increase the efficiency of residential refrigerators. Both of these initiatives help to reduce energy demand and therefore reduce many of the pollutants emitted during power generation. EPA has distributed a number of materials to these industries which explain the pollution prevention and economic benefits of energy efficiency.

Other program areas include:

- Natural Gas Star: A voluntary program with the natural gas industry to reduce emissions of methane and increase system efficiencies.

- AgSTAR: A voluntary program which promotes the use of profitable manure management systems that reduce pollution.

- Coalbed and Landfill Outreach: Two new EPA programs which will be launched in early next year to promote methane recovery at landfills and coal mines for use as an energy source.

Under President Clinton's Climate Change Action Plan, EPA and DOE will expand the scope and extend the outreach of federal efforts to promote the environmental benefits of energy efficiency.

Q8. Section 507 establishes small businesses air quality assistance programs. Do you believe the model should be extended to other media or become multi-media? For example, should Congress expand compliance assistance in the context of Clean Water Act Reauthorization?

A. The federal SBAP is a cooperative effort between four existing EPA Technical service centers; the Control Technology Center (CTC), the Emission Measurement Technical Information Center (EMTIC), the Pollution Prevention Information Center (PPIC),

and the Chemical Emergency Preparedness and Prevention Office (CEPPO), with the CTC serving as the focal point of coordination. This program is designed primarily to provide support to the state SBAP's in their efforts to assist small businesses (so that a small business person has to contact only one location in his or her own state for help). However, the federal SBAP will provide assistance directly to small businesses until the state programs are fully operational.

Although most state small business assistance programs (SBAPs) will not have all of the requirements of Section 507 in place until November of 1994, several states do have very active assistance and outreach programs operational now.

Along with the promulgation of new rules and requirements, materials will be prepared to explain these programs to small businesses. These materials will be written in layman's terms, and include simplified calculations where applicable. These materials will be made available through the federal SBAP and the EPA Small Business Ombudsman's Office, as well as the state SBAPs when the are operational.

Along with the increased efforts to include industry representation in the regulatory development process (more "up front" industry meetings and regulatory negotiation), there is also an effort to better represent small business needs and concerns. If the major trade association for an industry does not represent the small business section (as is often the case), minor associations or small businessmen themselves will be contacted to provide input. The state SBAPs are also being encouraged to take a role in providing representation for their small business community during such proceedings. One example is that the North Carolina Small Business Ombudsman is participating in the Reg-Neg for the Wood Furniture Manufacturing MACT rule.

Q9. **Progress on UVB Monitoring Network and "Index." (This is a system to forecast daily UVB levels as part of local weather reports, and to improve the data on ground-level UVB. Canada has a similar system in place).**

I am aware that EPA is working with other Agencies (NASA, NOAA, and the National Weather Service) to develop a UV forecasting and reporting system similar to the Canadian system. I believe this is a critical effort.

Does EPA still expect to have an operations system by next spring? Have NOAA, NASA, and the National Weather Service been fully supportive?

A. EPA is working very hard to make contractual arrangements and other preparations for operating four UV monitoring sites in 1994. These would be the initial sites in a planned 15-site network. The associated UV Index, which would be the means of

making the results of the monitoring network publicly available, will be a joint effort between EPA and the National Weather Service. While work is proceeding well within NOAA to develop the necessary methods for forecasting UV levels which are an essential part of any index, additional discussions will likely be necessary in order to incorporate this forecast into daily National Weather Service reporting.

Q10. What other activities, if any, does EPA have underway to promote public awareness of UV risks?

A. EPA is now orchestrating a national UV Index meeting involving stakeholders from the areas of public policy, science and public health to bring their differing perspectives to bear on how information can best be developed and presented to the public in order to encourage behavioral change. The role of some federal agencies, including NASA, is limited to providing technical information to others, including EPA which will participate in formulating the appropriate public health responses. EPA views this meeting, which will be held in Washington, D. C. in November, as the beginning of an ongoing process of refining the presentation and outreach aspects of the index so that it serves to the maximum extent possible the goal of protecting public health.

Is there a need for a more coordinated government-wide outreach and educational effort? For example, FDA is planning to publish a regulation governing sunscreen labeling. Labels are an important public education tool. Should EPA be working with FDA and other agencies on an overall strategy?

A. Clearly, the best public health results can only be achieved through a coordinated strategy to protect public health which involves all agencies with a contribution to make in this area, including EPA, DFA, NOAA, NASA, and the Surgeon General's office. EPA is in contact with FDA on the content of the tentative final monograph on sunscreen labeling. More broadly, the monitoring program EPA is now developing is being coordinated with other interested agencies through the Committee for Earth and the Environmental Sciences (CEES). In addition to monitoring ground level UV radiation, EPA believes that parallel scientific data should be collected on the state of the ozone layer. To that end, EPA is working with NASA and NOAA to develop and implement a program to provide timely information on ozone depletion in the stratosphere.

Q11. At a hearing held in August before the Clean Air and Nuclear Regulation Committee, EPA received poor marks from the state and local air regulators for

its implementation of the nonattainment provisions. The states focused on regulations which are critical to their ability to meet the requirements of the Act.

As you know, this November we are approaching a very important deadline. States are required to demonstrate that they will achieve a 15 percent reduction in emissions of volatile organic compounds, one of the major contributors to ozone, by 1996. EPA has a critical role to play in assisting the states to bring about this reduction, and I'm extremely concerned that the states do not believe EPA is fulfilling its partnership role.

The decisions discussed by the states were made by the Bush Administrations. But at that hearing I said I await the new Administration's response, not just in words, but in actions.

What have you done to address the concerns raised by the states about EPA's performance of its responsibilities under the nonattainment provisions of the Act?

A. EPA has published several technical guidance documents to assist States in developing their 15 percent rate-of-progress plans that are due November 15, 1993. These include:

1. "Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans," United States Environmental Protection Agency, Office of Air Quality Planning and Standards, EPA-452/R-92-005 October 1992.

2. "Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans," United States Environmental Protection Agency, Office of Air Quality Planning and Standards, EPA-452/R-93-002 March 1993.

3. "Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act," United States Environmental Protection Agency, Office of Air Quality Planning and Standards, EPA-452/R-93-007 May 1993.

4. "Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans," United States Environmental Protection Agency, Office of Air Quality Planning and Standards, EPA-452/R-93-005 June 1993.

In addition, in the Spring of 1993, EPA held a 4-session teleconference workshop, "Guidance on the 15 Percent Rate-of-Progress Plans and the Attainment demonstration

Due November 15, 1993." These were conducted as satellite downlink seminars, where State and local agencies could phone or fax in their questions after each segment of the seminar. A Workshop manual was prepared and distributed to the attenders. The sessions were videotaped, and EPA's Air Pollution Training Institute makes the tapes and the Workshop manual available to agencies who need them. Additionally, EPA regional offices have held numerous discussions with and provided informal guidance to state staff involved in 15% decisions.

EPA is still in the process of preparing the control techniques guidelines (CTGs) and federal rules for the categories required under Title I of the Clean Air Act. States had hoped to adopt VOC emission limits for source categories covered by the CTGs and use the emission reductions from them to meet the 15 percent rate-of-progress requirement. In general, States can only get credit for emission reductions if there is a federally-enforceable rule in place requiring those reductions. Although EPA is required to issue CTG's for a number of source categories by November 15, 1993, even if that deadline is met, the CTG's would not be available in time for States to fully adopt measures based on the CTG's. In recognition of this, EPA issued a guidance memo on May 6, 1993 identifying the amount of emission reductions States could assume would occur as the result of CTG's considering the current schedule for issuing the CTG's. Because of the delays in the CTG process, the May 6, 1993 guidance memorandum identified only two source categories where EPA expects that the CTG could be issued, State regulations could be adopted, and reductions could be achieved by November 15, 1996 (the time by which the 15 percent VOC reduction must occur).

Regardless of whether or not EPA issues CTG's by a particular date, states have always had the option of proceeding on their own to adopt controls for these categories of sources. In fact, the associations of state and local air agencies (State and Territorial Air Pollution Program Administrators [STAPPA] and the Association of Local Air Pollution Control Officers [ALAPCO]), have produced--with extensive EPA consultation and assistance--a "model 15 percent plan," which identifies available control measures for a number of source categories, including those for which EPA is preparing a CTG.[1] The intent of this model plan is to provide states with the information they would need to adopt rules to achieve the reductions necessary to meet the 15 percent requirement.

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[1]Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act: A Menu of Options. State and Territorial Air Pollution Program Administrators; Association of Local Air Pollution Control Officials. September, 1993.

EPA's Responses to Follow-Up Questions
from the September 23rd
Hearing on Clean Air Act Implementation
Senator Wofford

Q. **Mrs. Browner, there have been a number of trade press articles in recent months about the efforts of Venezuela to lobby this administration for some kind of relief from the Clean Air Act. Do you know anything about these efforts?**

A. The reformulated gasoline (RFG) provision of § 211(k) of the Clean Air Act (CAA) specifies that refiners must reformulate gasoline to be sold in certain ozone nonattainment areas beginning in 1995, and that non-RFG (conventional) gasoline may not deteriorate below the refiners' 1990 gasoline quality in order to prevent refiners from dumping dirty gasoline components removed from RFG. The 1990 baseline gasoline quality, or baseline, therefore must be established for each refiner. Under the RFG regulatory negotiation agreement, refiners' 1990 baselines also would be used to measure RFG compliance during 1995 through 1997. Beginning in 1998 RFG compliance would be measured against the statutory baseline set in the CAA.

Baselines for domestic refiners are set using actual refinery 1990 gasoline quality data, or post-1990 data and refinery modeling to impute 1990 gasoline quality. Under the RFG rule importers would be assigned the baseline set forth in the CAA due to possible difficulties in applying refinery modeling to imported gasoline.

EPA considered Venezuelan refiners comments on the RFG proposal who were concerned that they would be disadvantaged relative to domestic refiners because RFG imported from Venezuela would be measured against the statutory baseline, while RFG produced by domestic refiners would be measured against individual refinery baselines. The Venezuelan comments also suggested an approach for applying refinery modeling to imported gasoline.

EPA's December 15,1993 reformulated gasoline rule excluded individual foreign refinery baselines because they are difficult to establish and onerous to ensure importers claim the correct foreign refinery-of-origin. In addition, if individual foreign refinery baselines were allowed (but not required) there is the possibility foreign refiners would only submit data for an individual baseline if the individual baseline is less stringent than the 1990 U.S. average baseline that otherwise would apply to foreign refiners. "Gaming" of this type is not possible by domestic refiners, because all domestic refiners must establish individual baselines.

EPA's Responses to Follow-up Questions
from the September 23rd
Hearing on Clean Air Act Implementation
Senator Alan K. Simpson

Q1. The Chairman asked you to give "grades" to states, industry, EPA, etc. I note that such grades are not in your testimony. What "grade" would you give Congress on providing the funds you need to implement this act?

A. In my remarks at the hearing on September 23, I said that at this point in the implementation process, I would give each of the principal partners -- Congress, EPA, states and industry -- a "B" in terms of overall performance on Clean Air Act implementation. And I think that overall judgment can be fairly applied to the question of Congress' performance in funding the Act. It is true that some provisions are proving difficult to implement, and this is partly due to budget constraints -- for example, the resource-intensive FIP implementations, and the large number of mandated studies. But we are working with Congress to obtain the level of support contained in the President's budget; I think Congress deserves a "B" given the economic context and constraints within which we all have to live.

Q2. Does EPA have enough resources to comply with all of the mandates enacted by Congress?

A. No. The Congress has appropriated funds for EPA sufficient to address only high priorities. One of the first things that I did after becoming Administrator was to conduct a full base review of the Agency's FY 1994 program activities and resources. This review focused on an assessment of resources by statute, program activity, and environmental problem. I found that the Agency had been given responsibility for implementing many new statutory requirements without accompanying increases in resources.

In developing its FY 1994 strategy for carrying out the Clean Air Act Amendments of 1990, the Office of Air and Radiation focused on (1) funding those projects where statutory deadlines have already been missed and where OAR has entered a settlement agreement setting a new deadline; (2) maintaining funding for the next near-term Clean Air Act deadlines; and (3) supporting new implementation efforts in the EPA regions and states.

Q3. Question: Could you provide for the Committee a risk ranking of programs conducted by the Office of Air and Radiation along with the amount of resources dedicated to each program? In other words, identify the program that addresses the

number one health risk and the dollars assigned to this program, and so forth. Please also identify the cost associated with preventing each adverse health effect associated with this program.

A. Listed below is a chart identifying risk areas addressed by the Office of Air and Radiation and the resources associated with each risk area. Pursuant to Section 812 of the Clean Air Act Amendments, EPA has analyses underway that will examine both prospectively and retrospectively the costs and benefits of implementation of the Act.

RISK AREA	Type of risk Health	Ecological	FTEs	TOTAL ($Mil.)
Criteria Air Pollutants	High	High	1,515.0	319.5
Toxic Air Pollutants	High	Med./High	314.8	59.6
Stratospheric Ozone	Medium	High	30.7	22.6
Climate Change		High	33.9	25.0
Radon	High/Medium	Low	87.2	22.8
Indoor Air	High		31.0	6.8
Radiation	Medium	Low	44.0	6.7
TOTAL			**2,056.6**	**463.0**

Q4. Whatever happened to the concept of "appropriate technology" -where we try to match technology with the resources and abilities of the user -that was the buzzword of the 1980s?

A. The Agency has moved toward establishing performance targets and allowing the affected sources, rather than the Agency, determine the best, most cost effective approach to achieving them.

Q5. What is EPA doing to simplify the permit process so that new technologies can be tested in the real world?

A. OAR has efforts in progress to streamline both the New Source Review (NSR) Permit Program and the Operating Permits program. For NSR, we have established a subcommittee under the Clean Air Act Advisory Committee to provide independent advice on policy and technical issues associated with this project. Recommendations of

this subcommittee will inform our upcoming rulemaking package on NSR reform. In the case of Operating Permits, as we develop that program we are striving to minimize unnecessary permitting requirements and maximize industry flexibility. We believe existing statutes give us the flexibility we need to make progress on both these fronts.

OAR also is taking steps to make the Acid Rain permitting process as simple as possible. For example, we designed the permit application forms to require only the minimum information that is absolutely essential to issuing the permit to all affected sources. Further, because all standard requirements are pre-printed on the form, the application becomes the permit upon issuance which significantly reduces the Agency's own paperwork burden. These easy-to-use forms allow industry to focus on reducing emissions rather than dealing with unnecessary paperwork.

Q6. **In recent weeks and months, you've stressed that EPA is going to be flexible. Correct? Define what you mean by flexible? If a state's program is equally effective as an EPA program, but doesn't fit the EPA mold, will you approve the program, i.e. are you flexible?**

A. Flexibility has a number of dimensions in this context. Most basically, EPA makes use of performance-based standards wherever possible, leaving it up to the regulated community to decide how to meet these standards. Another dimension of flexibility is attention to the problem of the sometimes- disproportionate impact of our rules on small entities. In response to this problem, EPA recently revised its guidelines for implementing the Regulatory Flexibility Act to increase the focus on small-entity impact. Partly as a result of these guidelines, the Office of Air and Radiation routinely designs its rules to be sensitive to the differential relative cost impact on small entities. In our experience to date, the statutory mandates have not proved to be so prescriptive as to prevent such flexibility.

Regarding the Title V Permits program, we designed the implementing regulations to allow fairly wide latitude in the design of state permit programs, so long as they meet certain fairly general criteria. In the terms of your question, we have tried to design a program that is flexible enough to allow a wide variety of plans to "fit the mold." The judgment of whether a given program "fits the mold" will be made on a case-by-case basis as the state programs are submitted for approval. As stated in the preceding answer, as we continue to develop the operating permits program, we are striving to minimize unnecessary permitting requirements and maximize industry flexibility. We believe existing statutes give us the flexibility we need to make progress on both these fronts.

In the case of the acid rain portion of a state program, state-to-state consistency is particularly important because of the national nature of the program. EPA will review each submittal very carefully to ensure that the program would function compatibly with the national acid rain program as a whole. In May 1993, EPA distributed guidance to states explaining these requirements.

Q7. **The Clean Air Act required EPA to promulgate final NOx rules for dry-bottom wall-fired boilers and tangentially-fired boilers by May 15, 1992 so that utilities can comply by January 1, 1995. The rule is sixteen months late. Will utilities get additional time to comply? Will you issue an enforcement policy that provides for additional time for compliance?**

A. Many utilities are taking the actions necessary to comply with the Phase I NOx emission rates established in the statute, by January 1, 1995. Nevertheless, the Act and our proposed regulations do provide for a 15 month extension of that compliance date should it be necessary to maintain system reliability or if the technology is not in adequate supply.

Q8. **The Clean Air Act expressly states that dry bottom wall-fired and tangentially-fired boilers "shall not be required to installed anything beyond low-NOx burners. Some in EPA want to expand this to include a technology called "overfire air". Will the final rule reflect the statute, or will "overfire air" also be required?**

A. This issue has drawn great attention with the public split on what the statutory language means. EPA is now in the process of considering the public comment on both sides of this issue and will fully explain its view in the final rule.

Q9. **I've been told that EPA's air division has refused to provide copies of its consultant's reports to the regulated community. What are your views regarding public access to information in technical reports prepared by contractors?**

A. EPA has provided its reports to the regulated community insofar as they are relevant to the rulemaking and not legitimately subject to the deliberative process protections privilege provided by law. The Utility Air Regulatory Group (UARG) complaint to which you refer is being addressed through the appropriate administrative appeals process. The EPA Office of General Counsel has been fully involved in assuring the appropriateness of our actions.

The important point here is that all information on which the Agency will rely in this rulemaking is being placed in the public docket.

Q10. EPA has done a report on hydrofluoric acid as mandated under Section 112 of the Clean Air Act. Could you tell me if you think this study is scientific, fair and objective, and if the study accurately addresses the hydrofluoric acid issue?

A: The report was finalized on September 30, 1993, and transmitted to the Congress. The approach taken by the Agency in preparing this report was to involve stakeholders to the maximum extent practicable to achieve a sound technical, scientific, and objective basis for the study. Stakeholders included public interest groups, industry, trade associations, academia, labor, and government entities. We met with staff of the Environment and Public Works Committee in June 1992. The issues raised by the Committee staff during this meeting were substantially addressed as a result of the subsequent technical reviews described below. We plan to brief the Committee staff on the report's findings and recommendations.

The Agency held a Roundtable meeting to solicit input on the purposes, objectives and conduct of the study. A draft of the technical portions of the study was distributed to over 100 stakeholders for their comments. Approximately 50 comments were received. Furthermore, we asked the EPA's Science Advisory Board (SAB) to perform a technical review of the same draft. Representatives from a public interest group, industry, and academia participated in the SAB's review as invited specialty experts at the Agency's suggestion. The preliminary findings of the report were distributed to stakeholders, and a public meeting was held to discuss these findings.

The recommendations in draft form and modifications made to the draft after comments were returned were not made available to stakeholders, although a summary of modifications made to the draft was made available at the public meeting to discuss the findings. Instead, we have initiated a wide distribution of the final report to all stakeholders. At the public meeting, we agreed to consider preparation of an addendum to the report if comments warranted. As a result of the extensive public participation, we believe that the study is fair and objective, and accurately addresses the issues associated with the uses and hazards of HF.

Q11. Mr. Campbell stated that Venezuela has an unfair competitive advantage with respect to reformulated gasoline. Furthermore, Venezuelan officials are apparently bragging that they got a special deal from EPA. Describe EPA's position with

respect to Venezuela and gasoline. Also, is there any basis to the Venezuelans' claim that they have a special deal?

A. The reformulated gasoline (RFG) provision of § 211(k) of the Clean Air Act (CAA) specifies that refiners must reformulate gasoline to be sold in certain ozone nonattainment areas beginning in 1995, and that non-RFG (conventional) gasoline may not deteriorate below the refiners' 1990 gasoline quality in order to prevent refiners from dumping dirty gasoline components removed from RFG. The 1990 baseline gasoline quality, or baseline, therefore must be established for each refiner. Under the RFG regulatory negotiation agreement, and the reformulated gasoline rule announced on December 15, refiners' 1990 baselines also would be used to measure RFG compliance during 1995 through 1997. Beginning in 1998 RFG compliance would be measured against the statutory baseline set in the CAA.

Baselines for domestic refiners are set using actual refinery 1990 gasoline quality data, or post-1990 data and refinery modeling to impute 1990 gasoline quality. Under the final RFG rule importers would be assigned the baseline set forth in the CAA due to possible difficulties in applying refinery modeling to imported gasoline.

Venezuelan refiners commented on the latest RFG proposal, stating a concern that they would be disadvantaged relative to domestic refiners because RFG imported from Venezuela would be measured against the statutory baseline, while RFG produced by domestic refiners would be measured against individual refinery baselines. The Venezuelan comments also suggested an approach for applying refinery modeling to imported gasoline.

EPA's December 1993 reformulated gasoline rule excluded individual foreign refinery baselines because they are difficult to establish and onerous to ensure importers claim the correct foreign refinery-of-origin. In addition, if individual foreign refinery baselines were allowed (but not required) there is the possibility foreign refiners would only submit data for an individual baseline if the individual baseline is less stringent than the 1990 U. S. average baseline that otherwise would apply to foreign refiners. "Gaming" of this type is not possible by domestic refiners, because all domestic refiners must establish individual baselines. The standards for reformulated gasoline and anti-dumping are the same for gasoline used in the United States, whether produced at a domestic refinery or imported from a foreign refinery.

EPA does not allow individual 1990 baselines for foreign refiners (as opposed to US importers) because EPA lacks the jurisdiction to audit and enforce baseline requirements if imposed on foreign corporations.

Q12. What are your views on encouraging utilities to comply with the NOx rules early through an early election program?

A. The early election program proposed by the Agency may be an effective mechanism to help the industry comply with the Acid Rain NOx requirements. This proposal has received adverse comment just as other portions of the rule have . We are currently reviewing this to ensure that, if we retain this provision, it is environmentally beneficial as well as economically beneficial.

Q13. There has been some controversy regarding the Acid Rain Division's performance and interpretation of scientific information in the first NOx rulemaking. Would the air program be more efficient if the Office of Air Quality Planning and Standards were responsible for the second rulemaking?

A. No. Controversy is not unusual. There has also been controversy from the environmental community and state agencies regarding the performance and interpretation of scientific information conducted by the Office of Air Quality Plannings and Standards efforts to determine NOx RACT under Title I. As you know the CAA Amendments place substantial strain on the Agency resources. Under these difficult circumstances the Office of Atmospheric Programs is the most appropriate office for this assignment. You may also have noted that OAQPS, suffering from similar constraints, has not been able to revise the NSPS for NOx either.

Q14. With respect to dual regulation of radionuclides by EPA and the NRC, and, as of September 28, 1993, have you made any commitments to any member of Congress not to proceed with EPA's rulemaking to eliminate the dual regulation?

A. I have not yet made a final decision on whether or not to rescind EPA's authority under Subpart I.

EPA's Responses to Follow-Up Questions
from the September 23rd
Hearing on Clean Air Act Implementation
Senator Simon

Q1. What is the present status of the CASTNet (Clean Air Status and Trends Network) program, and is it on schedule? If not, what can be done to bring the program up to speed?

A. The CASTNET program is being implemented in accordance with the program design set forth in "Technical Design Proposal - Clean Air Status and Trends Network (CASTNET)" February 1992. This document will undergo peer review in the near future. The overall CASTNET Program, as envisioned by this document, includes several different monitoring programs to meet the objectives of the Clean Air Act, including:(1) Acid Deposition; (2) Visibility/Acid Aerosols; (3) Aquatic and Terrestrial Effects; and (4) Air Toxics. This document does not, however, specify a specific time frame for implementation of any phase of the program and is, of course, dependent upon available funding. During FY 94 we anticipate a modest increase in the number of sites monitoring for acid deposition and in FY 93 we initiated monitoring for visibility at six sites in the eastern U. S. In addition, as a result of recent discussions with the National Park Service, the Office of Research and Development will be expanding the monitoring capabilities for acid deposition at a number of sites in the western U.S. in FY 94.

Q2. What funds have been allocated to the CASTNet program for this year? Is this amount determined by EPA or Congressional appropriation?

A. CASTNET, as a network does not receive direct funding, rather, funding is provided through the Issue Planning Process. Primary funding for the elements of CASTNET are determined by EPA rather than by specific Congressional appropriation. The majority of the funding for the monitoring network in prior years has been provided under the Acid Deposition Issue Plan. In addition, funding for monitoring has been provided under the Environmental Monitoring and Assessment Program (EMAP). It is also important to recognize that the CASTNET design relies on many existing networks for data. These networks are funded by several different sources including other federal agencies, universities, and private industry. The CASTNET design, therefore, relies on these funding approaches to achieve its overall purposes. Primary funding, to date, has been directed to the monitoring of acid deposition, however, some resources have been allocated to each of the other areas identified in Question 1.

Q3. What is the difference in funding from the previous year? Is more funding needed?

A. As noted in Question 2, the overall funding for the CASTNET program comes from several different sources. With respect to monitoring for Acid Deposition, we are anticipating a modest increase in funding to support the monitoring aspects of the program in FY 94. If the Agency were to undertake to fully implement the design of the CASTNET Program, as well as cover for losses in support of other sources to the other networks, upon which CASTNET is reliant, additional funding beyond that currently anticipated would be required.

Q4. Has there been any obstacles within EPA or the Federal Government preventing the flow of funds to the universities and contractors implementing the program?

A. The majority of the atmospheric monitoring activities under CASTNET are supported by a single, multi-year contract which was signed in August 1992. No significant problems have occurred in the funding, implementation, or operation of that contact.

Q5. What difficulties has the CASTNet program encountered due to Clean Air Act implementation delays (i.e., Title I State Implementation Plans)?

A. Implementation of the CASTNET design is not dependent upon implementation of the air quality management aspects of the Clean Air Act. The only impact anticipated as a result of any delays will be the length of time required to be able to monitor the impact of implemented programs and assess whether such air quality management programs have improved the environment as anticipated by the passage of the 1990 amendments.

STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman and Members of the Committee, I am pleased to be here today to discuss the Administration's implementation of the Clean Air Act rules as it relates to the regulatory review process. This hearing is particularly timely because we expect that a new executive order on regulatory management—which would replace Executive Orders 12291 and 12498—will shortly be signed by the President.

In developing the new executive order we have sought to make a break with the past in certain important aspects. One of our objectives has been to restore the integrity of centralized review by creating a process for such review that is more efficient and more open to the public. Our goal has been to establish more cooperative and collegian relationships with the agencies in drafting better, more effective regulations. We are excited and optimistic about the changes that will take place.

To convey how the new executive order will streamline and improve the regulatory process, it may help to first summarize some of the main principles contained in the order that are relevant to this hearing. First, the new executive order will affirm the primacy of Federal agencies in the regulatory decision-making process. At the same time, the order will affirm the importance of centralized regulatory review to ensure that proposed regulations are consistent with the President's priorities, do not interfere with a policy or action taken or planned by another agency, and are consistent with principles of regulation set forth in the executive order. The order will encourage greater public participation in the regulatory process. And most importantly for present purposes, the new executive order will set out a process by which potential conflicts can be identified and resolved early in the process—before the agency has invested its time and resources.

There are several ways in which the new executive order will help improve the quality of Federal rulemaking and streamline implementation of statutory mandates. One important step will be an enhanced planning process that starts before rulemaking proceedings are formally initiated, so that the agencies will be aware of the President's priorities and will align their plans with those priorities to the extent permitted by law, and so that the public will have a sense of a coherent executive branch regulatory philosophy. The Vice President, along with the President's other regulatory advisers, will convene a meeting each year of the agency heads to the President to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year. We expect that in preparation for, or as a result of this early input, agencies will think through their various programs and set internal priorities. In addition, we have drawn on the model of the regulatory calendar developed during the Carter Administration to create a more meaningful planning document that includes the most significant regulations that each agency expects to propose or adopt during the coming year. This should enable us to identify potential conflicts at an early stage and thereby reduce the number of problems at the end of the process. Moreover the new executive order will encourage agencies to consult with the public and others before taking any regulatory action and to engage in consensus-based rulemaking.

Another important component of the new process is greater selectivity in reviewing regulations. Rather than review all proposed and final rules, we intend to free up our resources to focus on areas in which we can add the greatest value. This should result in a more focused—and faster—review. Under the new executive order, agencies would decide which rules they are working on are significant (based on their economic, social or legal importance), and OIRA will review only those rules that the agency or OIRA believe are significant. Finally, against the background of charges of abuse of the process by the previous Competitiveness Council and to promote good government, the new executive order will set forth procedures for disclosure of communications with outside parties and the agencies.

Let me now turn to discuss the review of rules mandated by the 1990 amendments to the Clean Air Act. The Clean Air Act Amendments of 1990 mandated an historic initiative that, when completed, will affect virtually every sector of our economy. This comprehensive overhaul of the Clean Air Act requires the Environmental Protection Agency (EPA) to develop regulations that implement a wide range of major activities—from protecting stratospheric ozone to requiring nonattainment areas to meet air quality standards for ozone and the other criteria pollutants.

The scope of the task before EPA is staggering. In its recently published Clean Air Act Implementation Strategy, EPA identified over 250 separate actions that it has already taken or plans to take (by December 1995) to implement the 1990 amendments. Over 100 of these are major rulemakings or reports with specific stat-

utory deadlines and almost three-fourths of these actions were to be completed within a 2-year-period ending November 1992.

The statutory deadlines requiring the Agency to complete roughly 70 significant regulatory actions within the first 2 years were a very ambitious agenda. Many of these rulemaking actions involve complicated, technical issues with significant implications for the environment, State and local governments in the affected areas, and the regulated community. In addition, EPA has sought to conduct public discussions with all interested parties in order to carry out effectively and fairly the regulatory mandates of the 1990 amendments. Because of the large number of required actions and their technical complexity, the agency reported during the reauthorization process that it would not have the resources necessary to carry out all the requirements within the timeframes required by the statute.

Nevertheless, much of the work mandated by the 1990 amendments has already been done. EPA has completed almost two-thirds of the (roughly) 70 separate rulemakings EPA was to complete by the end of 1992—implementing important parts of (1) the title II requirements for mobile sources, (2) the title IV acid rain provisions, and (3) the title VI provisions for stratospheric ozone protection. But much remains to be done. EPA still must complete a large number of regulatory actions—especially in terms of implementing the Hazardous Air Pollutant provisions under title III—in order to complete implementation of the 1990 amendments. And because of missed statutory deadlines, EPA currently faces over 30 consent order deadlines.

In recognition of the continuing task facing EPA in carrying forward its regulatory program, including timely implementation of the 1990 Clean Air Act Amendments, the Deputy Administrator of EPA, with the encouragement and support of the Administrator of EPA, and I have initiated extensive, far-reaching discussion on ways to improve OIRA review of regulations.

There are two key elements to our discussions: (1) the importance of developing early in the process a cooperative discussion of the issues associated with major rules; and (2) the need to focus OIRA's regulatory review resources on the most important rulemakings.

In the past, OIRA's review has tended to be focussed at the end of the Agency's process in developing a proposed or final rule. The Agency's rule development process may take one or two (or even more) years, requiring a substantial commitment of time and effort by Agency staff and management. Given this substantial effort, comments from OIRA that come at the end of the process are obviously less welcome, regardless of their merit. We believe a more effective and efficient review could be carried out by identifying early in the process the key issues and the analysis that OIRA typically seeks in the course of its review. The effort to encourage early discussions between EPA and OIRA will focus attention on these key issues and help avoid the problem with "last minute" issues and requests for additional analysis.

To this end, we have been exploring with EPA several alternative ways for OIRA staff to participate at an early stage in EPA's rule development process. In addition, we plan to set up a work group in an effort to reach agreement on some of the methodological concerns that arise in developing the analysis necessary to support decision-making on key issues. It is our hope that these initiatives will both improve the Agency's rulemaking and expedite the OIRA review process.

The second element—focussing our regulatory review resources on EPA's important rulemakings—is equally important. In our discussions with EPA, we have concluded that the best use of our limited regulatory review resources is to focus on EPA's significant rulemakings. EPA is one of the most prolific regulatory agencies within the Federal government—typically having a larger number of regulatory actions in the Regulatory Program than any other Agency. The benefits and costs of these regulations are substantial, often as high as a billion dollars or more a year. As a result, we are discussing with EPA the categories and types of rules that, in general, would appear to be significant and hence warrant review; at the same time, we are trying to identify those rules where there would be less value added so that they would no longer be submitted for review.

We believe that the reforms of the new executive order and the new cooperative spirit between EPA and OMB will improve the review process and lead to more effective regulations implementing the 1990 amendments. We are confident that with these changes, we will be able to work with the EPA to fulfill the Administration's responsibilities under the Clean Air Act.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions that you may have. Thank you.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 20 1993

Chairman Max Baucus
Senator John H. Chafee
Committee on Environment
and Public Works
SD 456 Dirksen Senate Office
Building
Washington, D.C. 20510-6175

Dear Chairman Baucus and Senator Chafee:

Thank you for the opportunity to testify before the Committee on Environment and Public Works on September 23, 1993. Enclosed is the answer to the question submitted by Senator Lieberman for the record.

I look foward to working with the Committee as the Administration proceeds to implement the Clean Air Act Amendments of 1990.

Sincerely yours,

Sally Katzen
Administrator
Office of Information
and Regulatory Affairs

LIEBERMAN QUESTION

1. Reformulated Gasoline

One of the innovative approaches to implementation of the Clean Air Act Amendment has been the use of regulatory negotiations. This approach favors consensus building that avoids litigation. As you know, EPA initiated a regulatory negotiation process with respect to reformulated gasoline. One of the most frustrating events of the last several years has centered on what happened with respect to this process. After all parties --industry, states, environment and the Administration, had reached an agreement, one party to the agreement--the ethanol industry--went to the President and had the agreement changed in a manner which, according to representatives of the states, is extremely detrimental to air quality. The entire regulatory negotiations process was completely undermined.

Question:

Would the approach of this Administration on regulatory review prevent such a situation from occurring in the future?

Answer:

The new executive order specifically encourages reg neg and other forms of consensual-based rulemaking because such approaches offer the possibility of more innovative solutions without extended litigation. We are currently exploring ways of streamlining review of the results of negotiated rulemakings, but the procedures for openness and accountability -- the disclosure of contacts, the conduct of meetings, and transmittal of written materials -- would be the same for all forms of rulemaking.

STATEMENT OF JAMES M. STROCK, SECRETARY FOR ENVIRONMENTAL PROTECTION, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Good morning Chairman Baucus and members of the Committee. I am pleased to share the Wilson Administration's views on the progress, to date, in implementing the Clean Air Act Amendments of 1990. I want to commend the Committee for its effort to oversee the progress achieved thus far and to assess what is working well and what elements of the program may need refinement.

The Clean Air Act Amendments of 1990 are a binding commitment to provide the people of this nation what we all have a right to expect—clean air. The act is far-reaching. It demands the best efforts of all of us to meet its goals. We need to work as a team—at all levels of government, and with the private sector—to fully shoulder our respective responsibilities.

We also need to keep our eyes on the prize. The success of a program is not measured by the elegance of its prose, or the complexity of its structure. Success means nothing less than accomplishing the intended ends. California is wholeheartedly committed to meeting this challenge—and California is proud that much of Federal environmental law reflects our experience.

CLEAN AIR ACCOMPLISHINENTS—AND CONCERNS

Your invitation identified several topics to be addressed. Please allow me to begin with the question of progress in cleaning up our air. The news is good—air quality in our State is undeniably getting better. Data for the past 5 years indicates that air quality continues to improve in our major urban areas. The number of days violating the ozone and carbon monoxide standards dropped by 18 percent and 35 percent, respectively. Our second largest metropolis—the San Francisco Bay area, with a population of 6 million people—will likely be designated as an "attainment" area soon. As you are aware, this is no small achievement; San Francisco will be only the second air basin in the entire United States to be so reclassified.

We attribute the majority of this progress to California's aggressive and long-standing motor vehicle and vehicle fuels regulations, which operate separately from Federal Government requirements. In some areas, however, Federal clean air legislation has also been significant. One example of actions we have taken because of Federal legislation is the requirement for oxygenated fuels. These fuels helped California realize approximately an 8 to 10 percent reduction in carbon monoxide levels last winter. Another example of Federal prompting is the development of initial plans for abating problems in areas of California that have high particulate levels.

It is important to emphasize that much of California's progress in meeting the Federal requirements has been achieved through a model where the U.S. EPA sets the standards—but California is accorded the flexibility to craft solutions to meet our unique challenges and circumstances. These solutions not only tend to be in the forefront of national, indeed international environmental leadership. Equally important, they are solutions that Californians accept and apply vigorously—because they are solutions that reflect California conditions. Regrettably, in recent times we are seeing the Federal bureaucracy take a new tack, abandoning this Federal-State partnership that has served well. Contrary to the commitment to reinvent government led by Governor Wilson and also embraced by the national administration, U.S. EPA regulations are increasing prescriptive, complex, and focused on minutiae in a way that may be acceptable to lawyers, but are frustrating to those whose goals are environmental or economic. We seek the attention and guidance of this committee in the face of this unfortunate trend.

TRANSPORTATION: REFORMULATED FUELS, CONFORMITY I&M

The Clean Air Act Amendments address several areas related to transportation: reformulated gasoline, conformity between air quality and transportation planning, and enhanced inspection and maintenance programs. With respect to the first, I am pleased to report that California has a reformulated gasoline program that fully complies with and even goes beyond the Federal program. We have worked closely with the U.S. EPA and have their full support for our program.

Transportation conformity is another matter. There are several major issues at stake. We have waited 2 years for the final U.S. EPA regulation to resolve them. California submitted extensive comments this spring to the U.S. EPA on its proposed transportation conformity regulations. Our concerns related to how often conformity review must be performed, what scope of analysis is required, and when changes in plans and priorities are acceptable, The sum and substance of our comments was that the process should be as efficient, timely, practical, and fair as possible. We also urged the U.S. EPA to move quickly with a final regulation to ensure

the process can move forward with a reasonable degree of certainty. We are still waiting.

With the Chairman's assent, I would like to submit, for the record, California's comments on U.S. EPA's proposed rule. Our comments provide clear examples of the Federal bureaucracy seeking to impose entirely unnecessary detail on the States—adding directly to cost without commensurate air quality gains. California's comments are also significant because they are the meeting the goal of this Committee: for the first time, our air and transportation agencies submitted combined, consistent comments. The experiences of our two agencies indicated that the U.S. EPA proposals are often contrary to both transportation and clean air goals.

The topic of enhanced inspection and maintenance is extremely important to California. Regrettably, it is currently the subject of heated debate between California and the Federal Government.

California's experience with "I&M" goes back to the late 1960's. We have substantially modified our inspection program, twice, to take advantage of current knowledge and to make it as effective as possible. We are committed to doing that once again through comprehensive reform.

In reforming our "Smog Check" system, leaders of both political parties have held firmly to the concept of meeting the stringent inspection and maintenance performance standards established by U.S. EPA. At the same time, to the extent that these strict environmental standards can be met without abandoning the structure—and the thousands of working people—comprising our current program, we certainly should do so. Across the board, Californians recognize that the quality and effectiveness of any inspection and maintenance program depends on meeting three objectives: identifying cars with high emissions; making certain the cars properly repaired; and then enforcing the law vigorously and continuously when the cars are back on the road.

Reforms recently approved overwhelmingly—on an entirely bipartisan basis—in the California Assembly, and endorsed by Governor Wilson, would fulfill the objectives in at least four ways. First, we would improve the quality of inspections by adding dynamometer tests of exhaust and evaporative emissions. Second, we would require better trained technicians using improved diagnostic information to perform more effective repairs. Third, we would add the assurances and safeguards necessary to assure inspections and repairs are of the highest quality. Fourth, enforcement would be dramatically strengthened. Most significantly, enforcement would include an extensive network of remote sensors that measure the on-road emissions of millions of vehicles in a cost effective manner. Cars with the highest emissions will be identified and sent for mandatory repair. Cars will be exposed to on-road measurements every day, not just once every 2 years. This emphasis on enforcement means that inspection and repair functions would be separated in a way that is at once cost-effective and consumer friendly. Overall, it also means that the program would focus on the on the relatively small percentage of vehicles that emit as much as one-half of our automobile emissions. In the larger sense, members of the Committee will recognize that this is, in effect, a "tiered" system that treats those presenting environmental risk differently from those presenting less significant risks. This is also an approach that California, led by Governor Wilson, is applying in other areas, such as air and hazardous waste permitting reform.

Using this approach, the small percentage of cars that cause a greatly disproportionate share of the vehicle pollution will be quickly identified, repaired, or removed from our roads. Those who seek to avoid inspection requirements will be caught. The on-road program will be an unprecedented and strong deterrent to operating a tampered or malfunctioning vehicle.

We are convinced that our proposed reforms would reduce emissions at least as much as required by the U.S. EPA regulations, without the economic disruption and loss of jobs that would occur if we implemented U.S. EPA's centralized approach. We have backed our program with a commitment to accept a centralized program if ongoing evaluations of actual program performance show the program falling short of U.S. EPA's performance standards. The proposed legislation also would convene an independent committee to evaluate the effectiveness of the new program and to have the authority to abandon the current program in favor of the U.S. EPA's program.

Californians, irrespective of political party, cannot accept an EPA model for inspection and maintenance that would result in job disruption for thousands of people when a program that is equally, if not more protective of the environment, is readily available. U.S. EPA can speak for itself But I would ask this committee to seriously consider the implications of that agency drafting regulations which amount to a de facto preemption of State authority, when the statute Congress

drafted has none of the earmarks of preemption that is so carefully, and rarely, imposed in environmental statutes. One cannot help but wonder how much better our time could be spent working together, State and Federal governments, to craft a solution that would meet the unique needs of California—where more than 10 million cars will be affected by the eventual inspection and maintenance system. In all likelihood, given our history, California will also, given the opportunity, do so in a way that would set a useful precedent. It is clear enough that the success of a regulatory effort this wide-ranging will not, in the end, be determined by regulations from the desks of planners from far away, but by the actions of thousands of men and women working under the hoods of our cars.

MARKET-BASED INITIATIVES

California's support of economic incentives for environmental improvement is well-established, particularly in air regulation. California has a large-scale effort underway to put a major air emissions trading program into action. Just last week the Governor transmitted his public support of the trading program, the South Coast Air Quality Management District's "RECLAIM" effort. As it now stands, RECLAIM holds the potential for linking environmental and economic progress in an unprecedented way—far beyond what traditional "command-and-control" regulation can achieve. RECLAIM also needs some work—but State government is assisting the South Coast District in achieving State requirements, rather than unnecessarily hindering them. Because of its magnitude and significance, the development of RECLAIM is therefore not only a matter of interest in Los Angeles, or Sacramento, or Washington—but across the world.

What is less clear to us is where the Federal bureaucracy stands. The U.S. EPA's proposed rulemaking on Economic Incentives Programs, while generally consistent with California's efforts, was far too prescriptive and is likely to hinder their development. The U.S. EPA needs to minimize regulatory restrictions while encouraging program innovation. To do less is to take a step backward.

TIMELINESS

We believe that the U.S. EPA needs to be more diligent in adhering to the deadlines laid out in the Clean Air Act as well as the schedules it has imposed on itself. Let me cite an example of how the lack of timeliness in processing SIP revisions is exacting a cost for business in California. Some industries in California need to comply with two sets of oft-times conflicting regulations. This situation arises when the U.S. EPA fails to act in a timely manner on rules submitted as SIP revisions. In such situations, an industry must comply with outdated rules in the SIP and with new air district rules. While some overlap is understandable and inevitable, we find prolonged delays (greater than a year) untenable.

These rulemaking delays lead to uncertainty and greater difficulty in meeting the requirements of the act. U.S. EPA may miss a deadline and have no penalty other than a deservedly unpleasant congressional oversight hearing. But the States are subject to ultimate penalties for missing the ultimate compliance dates, even if U.S. EPA is the cause of most or all the time lost.

NEW DIRECTIONS FOR THE FUTURE

I noted at the outset that we have made considerable progress in cleaning up the air. We believe we can sustain this progress into the next century. But to do that, the Wilson Administration asks for this committee's attention and support in two crucial areas.

PERFORMANCE VERSUS OBEDIENCE

First, the U.S. EPA must make performance—not obedience—its highest priority. All too often the U.S. EPA appears more concerned with process than with outcomes—even when, as in the case of inspection and maintenance, we explicitly seek accountability. Vice President Al Gore put our position well when he recently spoke to the National Governors Association Conference in Tulsa:

> Program rules and regulations must be fundamentally rethought and their focus changed from compliance to outcomes, from sanctions to incentives.

We do not question U.S. EPA's commitment to our nation's clean air goals; we do believe the agency has gone off track. Far too much energy has been expended on minutiae, and not enough on the unifying objectives. Instead, EPA should define the broad context while allowing for—indeed demanding—innovation and imagination from States in determining the most effective real-time approach.

Like I&M, the title V operating permits program is an example of Federal regulatory overstretch. The U.S. EPA is interfering with California's ability to implement an equally effective, yet far less costly, permitting program because it does not precisely fit the mold of U.S. EPA's title V regulations. This is hard to understand. California has had a very stringent and effective permitting program in place for many years, one that meets or exceeds the goal of the title V requirements. Yet U.S. EPA's prescriptive approach requiring point-by-point adherence to its permit regulations could result in costly, duplicative recordkeeping and source testing with no air quality benefits. If not resolved, industries and air districts in California will be saddled with tremendous administrative burdens at the same time we are aggressively simplifying our permitting processes.

Another example is the Photochemical Assessment Monitoring System or PAMS requirements. We share the U.S. EPA's commitment to high-quality monitoring data. But we believe that California's already extensive database and comprehensive, state-of-the-art monitoring system fulfills or exceeds the intent of the requirements. The U.S. EPA's requirements are enormously expensive and do not provide commensurate benefits.

A final example is U.S. EPA's toxics program and requirements for maximum achievable control technology. California has in place regulations that without question reduce emissions (and risk) beyond the level of the Federal standard. While we are encouraged by the U.S. EPA's commitment to design its new air toxics programs with flexibility for the States, we remain concerned that it may impose overly prescriptive requirements when determining the equivalency of the States' programs. California's program may not be considered equivalent without duplicative recordkeeping, reporting, and source testing. Furthermore, U.S. EPA's requirement that all State emission standards be written "in the form of the Federal standard" could severely restrict the State's ability to utilize innovative approaches.

TECHNOLOGY DEVELOPMENT

The second overarching need is for the Federal Government to actively support the development of advanced clean air technologies. As you know, California is an international leader in environmental technologies overall, with more than 180,000 people producing annual revenues of close to $20 billion in the environmental technology sector (as defined by the San Diego-based Environmental Business Journal, whose sector definitions are now being adopted by the U.S. government for the nation as a whole). Governor Wilson has also created an innovative, public-private California Environmental Technology Partnership, which, in turn, is now spinning off a related, private-sector effort, the California Environmental Business Council. It has become clear, as the partnership has moved forward, that permitting simplification and reform is integrally related to technology research, development and commercialization, and we will look to U.S. EPA for assistance in that area in the future.

California's air regulations are justly noted for their emphasis on technology development. The low-emission and zero-emission automobile regulations are perhaps the most noted examples, but others, such as the reformulated fuel regulations, are also of great importance. Overall, the State approach has been to create high performance standards while leaving the market to determine which technologies will best meet our needs.

Where the national government can add value is in advanced research. The Federal Government has shown leadership in the technology of alternate fuels, such as the development of advanced direct injection lean burn methanol engines. However, the scope of research has been narrow. Relying on just one or two approaches for significant motor vehicle emissions reductions is unwise. The U.S. EPA also appears reluctant to accept the potential for significant reductions from conventional gasoline powered engines despite the evidence from California's work in this field.

Where regulation relies upon the establishing of performance standards, accompanying research must aim to reflect the many, sometimes surprising results of market-based innovation. While this approach may appear unsettling to those inclined to have the government pick specific "winners" and "losers," it leads to greater stability for the program as a whole. New technologies emerge so quickly in the field of emission control that a technology heavily supported by government can be obsolete before it is ready for commercialization. California experience with the rapid changes to gasoline composition bears this out. Recently, methanol fuel vehicles appeared to some to represent "the" technology of the future. Nonetheless, with great speed, oil companies and motor vehicle manufacturers responded with technological breakthroughs that will allow gasoline fuel vehicles to meet increasingly stringent emission standards in the foreseeable future. What some once believed

could only be accomplished with alternative fuels is now being done with reformulated gasoline and more advanced vehicle controls.

CLOSING THOUGHTS

A change in perspective would help in accomplishing all of the efforts I have been discussing. The Congress has been careful to preserve State authority in environmental statutes, including the Clean Air Act Amendments of 1990. But the U.S. EPA has all too often held back from serious discussion of alternative, creative ways to meet Federal mandates. Instead, in writing regulations, the U.S. EPA all too often interprets the statutes in ways that require the States to follow its prescriptions precisely or face enforcement actions for acting in contravention of the underlying statutes. The Federal Government does two things well in the environmental area: set environmental standards and enforce the law. Beyond those necessary areas, the States should be recognized as the engines of innovation for environmental progress.

Californians are justly proud of their environmental leadership—and keenly aware of the need for continual improvement. California represents, to a great extent, the environmental challenge that the 1990 Clean Air Act was intended to address. In many cases, we are also the model the nation will follow. More than 50 percent of the United States residents exposed to unhealthful air reside in our State. California's struggles are themselves truly national in proportion We need the U.S. EPA to recast its regulatory strategies around this central fact.

The Clean Air Act Amendments of 1990 have tough but achievable goals. Then-Senator Wilson worked with members of this committee to draft the law, and, as Governor, he is firmly committed to meeting its standards. It is in no way contradictory to also urge that the U.S. EPA interpret the statutes sensibly, providing the flexibility in implementation that Congress has made possible. Providing flexibility to the States to achieve the goals is in no way a retreat from the commitment to meet the goals. This committee has long taken, in a bipartisan manner, the approach that State action for the environment should be encouraged, and that Federal preemption of State laws should be limited. We hope that the U.S. EPA would follow the guidance offered by an illustrious Californian, General George S. Patton:

> Never tell people how to do things. Tell them what to do and they will surprise you with their ingenuity.

Thank you for the opportunity to speak with you today. I would be pleased to respond to questions.

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control • Integrated Waste Management Board
Office of Environmental Health Hazard Assessment • State Water Resources Control Board • Regional Water Quality Control Boards

Pete Wilson
Governor

James M. Strock
Secretary for Environmental Protection

October 26, 1993

Senator Max Baucus, Chairman
U.S. Senate Committee on Environment and Public Works
511 Hart Senate Office Building
Washington, D.C. 20510

Senator John Chafee
Ranking Minority Member
U.S. Senate Committee on Environment and Public Works
511 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators:

Thank you for the opportunity to supplement our previous testimony and correspondence. I hope these additional materials adequately answer the questions posed in your September 28, 1993, letter.

If you need additional information, please contact Bob Borzelleri, Special Assistant, at (916) 324-9670.

Sincerely,

James M. Strock
Secretary for Environmental Protection

Attachment

555 Capitol Mall, Suite 235 • Sacramento, California 95814 • (916) 445-3846 • Fax: (916) 445-6401

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RESPONSE BY JAMES M. STROCK TO ADDITIONAL QUESTIONS

Question. What grade would you give Congress on providing States and communities the resources needed for environmental statutes?

Answer. While the Congress has provided substantial resources for implementing the Clean Air Act, the programs at State and local levels are still underfunded. This problem is exacerbated by prescriptive regulations that mandate extensive (and often unnecessary) data gathering and analysis. At a minimum, Congress should continue the current level of funding until attainment of national air quality standards is in sight.

Question. How would Cal/EPA rank Federal priorities regarding air program oversight, reauthorizing the Clean Water or Safe Drinking Water Acts, or other acts?

Answer. Cal/EPA is currently involved in the final phases of a comparative risk project which, when completed, will provide the kind of information needed for scientifically based responses to questions of priority ranking of the various environmental protection acts. In the meantime, we would speak in more general ranking terms by pointing to the clear need to address issues in Superfund. In our view, the Clean Air Act and Clean Water Act could use fine tuning and maintenance, but would not demand the same level of attention as Superfund.

Question. What regulations, other than the reformulated gasoline regulation, would be appropriate for regulatory negotiation?

Answer. Regulatory negotiations, while theoretically attractive, have not worked well in practice. Critical interest groups have elected not to participate, making consensus impossible and increasing the risk of litigation. Statutory deadlines have been missed, leading some participants to view "reg/negs" as little more than a delaying tactic. And decisions reached during negotiations have been overturned by upper management or other involved agencies (e.g., the Office of Management and Budget), causing all parties to lose faith in the process.

The objectives of a negotiated rulemaking—namely, involving key players and framing reasonable compromises—could be achieved through a more open, traditional regulatory process. We prefer that U.S. EPA continue with the proposal process through the Federal Register, provided sufficient time is afforded for public comments and those comments are actually considered.

Question. Can you elaborate on the air quality benefits of the California's Low Emission Vehicle Program?

Answer. In 1990, the California Air Resources Board (ARB) adopted a long-range, far-reaching program to control emissions from light-duty motor vehicles (passenger cars and light-duty trucks). The program combines stringent, technology-forcing emission standards with considerable compliance flexibility.

The low-emission vehicle (LEV) program is unique. It treats the vehicle and its fuel as two components of a single system. The LEV program can accommodate a wide variety of different technologies and fuels, including reformulated gasoline, compressed natural gas, methanol, and electricity.

Between the 1994 and 2003 model years, the LEV program sets an overall fleet average standard for emissions of non-methane organic gases. This allows vehicle manufacturers to choose from a family of LEVs—transitional, low, ultra-low and zero emissions vehicles (TLEVs, LEVs, ULEVs, and ZEVs, respectively)—for any given year or production. The exhaust emission standards for these four categories of vehicles in nonmethane organic gases (NMOG) are:

Vehicle Category	NMOG, in g/mi.
TLVE	0.125
LEV	0.075
ULEV	0.040
ZEV	zero

The passenger car standards for 2003 are 75 percent lower. In addition, the nitrogen oxide and carbon monoxide emissions are 50 percent lower than the Federal standards that apply during the same timeframe.

The ARB has also developed an advanced program to monitor vehicle emission systems known as the on-board diagnostic program (OBD–II). This technology, which will be introduced in the 1994 model year, should detect nearly all problems that can lead to emission increases. As a consequence, an inspection and maintenance program which incorporates OBD–II will create an effective means of controlling emissions from low-emission vehicles.

The LEV and OBD–II programs will result in the following emission reductions in California in the years 2000 and 2010:

EXPECTED STATEWIDE EMISSION REDUCTIONS

(TONS/DAY)

Year	Non-Methane Organic Gases	Nitrogen Oxides	Carbon Monoxide
2000	24	29	103
2010	110	160	541

As of September 1993, State and regional transportation agencies have obligated $158 million of California's FY 1991–92 and FY 1992–93 Congestion Mitigation and Air Quality Improvement (CMAQ) funds. Remaining CMAQ funds (about $105 million) are being obligated in new and amended Regional Transportation Improvement Programs (RTIPs) and the State Transportation Improvement Program (TIP). Of the amount currently obligated:

- 48 percent was programmed for transit projects, including construction, equipment, and limited operating expenses for new and improved services, and parking for transit services.
- 40 percent was programmed for highway and road projects that improve traffic flow or encourage ride sharing, including traffic management and control projects, signalization projects, intersection improvements, and construction of dedicated high vehicle occupancy lanes on freeways, highways, and arterial streets.
- 5 percent was programmed for shared ride services, including vanpool and carpool programs, and parking for shared ride services.
- 4 percent was programmed for bicycle and pedestrian facilities such as commuter bicycle and pedestrian trails, bicycle lanes, storage facilities and promotional activities.
- 3 percent was programmed for programs that reduce highway demand such as employer trip reduction programs, transportation management plans, telecommunication and flexible work schedule programs, and vehicle restriction programs.

Question. Could you expand on the incentives for technological innovation that a program such as (RECLAIM) in southern California provides?

Answer. The California Air Resources Board (ARB), has long utilized performance-based, market-related strategies to augment traditional regulations. This strategy has reduced compliance costs, and has led to product innovations as profit and performance were brought together. The Regional Clean Air Incentives Market (RECLAIM) is the latest evolution of California's use of incentive-based measures that, in this instance, targets industrial sources of pollution.

Real-world examples can be found in the ARB's application of economic incentives to reduce emissions from motor vehicles, fuels, and consumer products. These regulatory efforts are resulting in accelerated development and introduction of new and improved technologies, reformulated and lower polluting product lines, new applications for existing technologies, and product design improvements—all of which are improving air quality, reducing energy demand, and minimizing costs to the regulated community. Prominent examples of ARB-adopted, incentive-based regulations include emission credit banking for reducing lead in gasoline, innovative products provisions in consumer product regulations, the use of fleet averaging and credit banking to comply with new vehicle emission standards, and marketable credits for accelerated introduction of electric vehicles or early retirement of gross emitting vehicles. Especially as these strategies apply to the motor vehicle, technological innovations are being developed that target industries specializing in advanced micro-elec-

tronics and digital equipment, automotive engineering and design, and electrical and chemical engineering. The use of alternative fuels is also leading to more intensive research and development of fuels from agricultural products.

In the area of product reformulation, the ARB's consumer products regulation has led to the development of products that are more environmentally benign while being cost-competitive with higher emitting formulations. New and improved technologies have come about in response to air pollution control requirements that lower emissions from groundwater contamination treatment, result in solvent reclamation in product manufacture, substitute ozone-depleting CFCs with water-based cleaning solutions for use in the electronic circuit board industry, and produce high transfer efficiency spray coatings equipment.

Control requirements that stemmed from an electric utility "bubble" regulation have also led to new, innovative technologies for gas turbines. As utilities and other power producers begin to design and build new plants to meet anticipated demands for new capacity, more compact, efficient, and less expensive units are gradually replacing older, dirtier, and less efficient units.

In the area of design improvements through technology transfer, a joint ARB-industry demonstration project has resulted in significant reductions in emissions of hexavalent chromium through the use of pollution prevention and pollutant removal techniques.

(Please) discuss the South Coast Air Quality Management District's successful experiences with carpool regulations.

The South Coast Air Quality Management District adopted its carpooling rule, Regulation 15, in December 1987. Regulation 15 is designed to decrease mobile source emissions by increasing employee carpooling, transit ridership, walking, biking, and telecommuting. The rule applies to all employers of 100 or more employees. These employers are required to meet specified ridesharing performance targets that are measured in terms of employee average vehicle ridership (AVR). The AVR is a ratio of employees to vehicles driven to work and pertains only to those employees who arrive at work between 6 a.m. and 10 a.m., the "peak" weekday commute period.

Three AVR targets have been identified based on population density and availability of transit, high occupancy vehicle lanes, and other infrastructure that supports travel modes other than single occupancy vehicles. In general, central Los Angeles employers are to achieve an employee to vehicle ratio of 1.75; employers in the western portion of the basin, 1.5; and employers in the eastern portion of the basin, 1.3.

The rule phased in plan submittals over time. The first plans were from employers of 500 or more employees, then 200 or more, and finally 100 or more. The District has approved over 6,000 employer trip reduction plans. More than 3,000 plan updates and over 1,000 second updates have also been approved by the District. In recent years, several amendments have been made to clarify and simplify implementation procedures for employers.

Prior to the adoption of Regulation 15, approximately 81 percent of employees drove alone to work. The current data base for regulated employees shows that 29 percent now participate in some form of ridesharing or alternative modes of travel.

Employer-based AVR increased from 1.13 to 1.24 between 1987 and 1992. The District estimates that the air pollution emission reduction benefits are 78.4 tons/day of carbon monoxide, 6.8 tons/day of reactive organic gases, and 5.0 tons/day of oxides of nitrogen. Recent amendments to the rule are expected to further increase emission reduction efficiency.

Commuter Transportation Services, Inc. conducts an annual telephone survey of roughly 2,500 commuters in the South Coast region. The "State of the Commute" reports that full time ridesharing has gone from 17 percent in 1989 to 23 percent in 1992. Part-time ridesharing has increased from 6 percent to 8 percent in the same period.

This success occurred despite the facts that 94 percent of employees surveyed had free parking, and only 36 percent believed they had transit access to work. Furthermore, transit access has been steadily declining over the last 3 years.

A 1993 report indicates a slight decrease in ridesharing from 1992 levels. The decline in the economy likely affected business and commuters alike. Unemployment for Southern California grew from 7.6 percent in 1991 to 9.5 percent in 1992. Certainly, industry shutdowns and workforce layoffs have affected employer-based AVR rates. In addition, carpools have lost members due to layoffs, and many employers cannot currently afford to offer ridesharing incentives.

Since the most recent CTS report, a major ridesharing media campaign has been launched in Southern California and the Metrolink and Metro commuter rail net-

works have come on line. These actions are expected to have a significant, positive effect on commuter mode choice.

STATEMENT OF ROBERT H. CAMPBELL, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER OF SUN COMPANY, INC.

Thank you, Mr. Chairman.

It's a privilege for me to be a part of this hearing as you begin to fill out the report card on the Clean Air Act amendments of 1990.

It's only fair to warn you, however, that today I'm going to test your capacity for good news. Before I finish these remarks I will have commended both the House and the Senate for passing the Clean Air Act legislation that has both a noble purpose and achievable goals.

If you are not emotionally prepared for compliments, I can sympathize with that feeling.

Seven months ago, when my company became the first Fortune 500 firm to endorse the CERES environmental principles, I was prepared for criticism from business peers, shareholders and environmental doubters about our willingness to embrace this strict code of conduct, while submitting ourselves to increased public accountability.

What we weren't ready for was the avalanche of praise, the congratulatory mail, the pleasant phone calls and even the editorial support.

As CEO of an oil company, you can appreciate that I haven't had much experience in dealing with applause. That's also a sensation that I imagine you experience infrequently.

What I want to emphasize today, as you take the temperature of this piece of 1990 legislation, is that if both business and government will each do what they do best, this law will continue to produce very positive results for America.

Is it perfect? Of course not! There are lots of things we can do better.

Is it manageable? You bet!

I'm not going to use these few minutes at my disposal to run a flood of numbers at you. You can find a wealth of that data in the written material I've submitted.

What I do want to share with you, however, are some simple realities that all of us have a right to be proud of.

America's air is getting cleaner.

Water and soil quality are improving.

And American industry is working hard to establish a positive relationship with State and Federal regulators and legislators, while trying to remain competitive in a tough international market.

Most of all, the attitude is changing. There was a time when environmental protection and economic prosperity were thought to be incompatible—hostile neighbors who built fences and ridiculed each other on the six o'clock news.

Some of that is still around. But it's dwindling. Why? Because industry realizes it must clean up its act, and environmentalists realize you need a strong economy to pay the clean-up bill.

Your invitation to me to address you today suggested that I might want to grade the papers of the various industries and the States—to evaluate how well they are doing in implementing the spirit and substance of environmental legislation.

For obvious reasons I prefer not to engage in judging a beauty contest of this nature. One of the early lessons you learn in this environmental renewal is that each State, each industry, confronts circumstances made different by geography, technology, economics and politics.

Instead, I'd like to touch briefly on five lessons I think we've learned while dealing with this act.

LESSON NO. 1: IT DOESN'T HAVE TO COST SO MUCH

Several factors are at work here.

One is the rigidity of the law. Leaving little room for flexibility, it locks in on current technology, and specifies the $20 million solution known today when, just around the corner, a $1 million solution is being developed.

We're talking about the pace of implementation here. About moving away from command and control and having the patience to let industry develop technically sound solutions. Legislators need to set goals and standards. Then let the free market develop cost-effective solutions. Today we have the situation where legislation has tied the hands of both industry and regulators to implement new and better solutions based on good science.

I believe that U.S. industry is willing to spend the necessary money to solve "real" problems. What we need, however, is your cooperation in making this a cost-effective experience.

Health care people will tell you that the bulk of your lifetime medical expenses will go to cover your final 30 days on earth. Similarly, about 80 percent of environmental correction funds are spent on the final 10 percent of the problem. And today there are reasonable questions being asked as to the real meaning of that final 10 percent.

All these matters of time, technology and the rigidity of standards are critical to the cost equation.

As you go about your oversight duties, I invite you to entertain a thought about your role and ours—and to ask the question: "Doesn't it work better for this Nation if Congress sets the goals; and industry, in harmony with governmental agencies, pursues the best solution?"

LESSON NO. 2: IT'S EASIER TO DANCE WITH ONE PARTNER THAN IT IS WITH 50

First of all you need to recognize that some environmental standards require Federal uniformity.

It just makes so much sense. Sit where I sit for a moment. See what I see. One State trying to outdo the next. Pretty soon you have a "greener than thou" contest.

What does this do to the manufacturer? You can't begin to imagine the nightmare in my business of trying to tailor our products to meet the expectations of varying regions, cities and States—only to have them change their minds later.

If there's one lesson to be learned in the Clean Air Act of 1990 and passed on in future legislation, it would be to establish some standards of environmental performance that cross State lines.

Doing so will greatly enhance both the environmental and economic results.

LESSON NO. 3: WE NEED TO KEEP OUR COMPETITIVE GUARD UP

Please understand your power. Environmental laws drafted by this committee have a greater impact on the U.S. economy and jobs than any other laws passed by Congress. Including taxes.

That places enormous responsibility on you to weigh the competitive considerations of your actions.

Six days ago I testified before a subcommittee of the House Ways and Means Committee. I, along with union officials and environmentalists, are in favor of an environmental equalization fee on gasoline being shipped into this country.

America has the toughest environmental laws in the world. Frankly, I'm glad it does. And you were a part of making that happen. Environmentally, that gives us a leg up.

But in the economics of my business—domestic refining—it puts us at a severe disadvantage. Foreign countries, with environmental laws 5-to-20 years behind ours, have refineries unburdened by the cost of upgrading their facilities.

They enter our markets with a substantial cost advantage. And so we start shutting down refineries in the United States, (over 150 of them in recent years) and we proceed to export jobs, pollution and our national security. That just doesn't make sense.

I strongly support the environmental goals you have so ably established, but in their implementation let's make sure American businesses, American jobs and the U.S. economy do not become the price of such a package. I'm convinced we can find the proper balance and in the process also lift the rest of the world's environmental sights.

LESSON NO. 4. WHEN YOU'RE WINNING THE CONTEST, DON'T CHANGE YOUR GAME PLAN

Let's admit to ourselves—it's working! The air is getting cleaner. There are fewer ozone and carbon monoxide exceedances. And 1993 was a very hot summer, but we fared a lot better than 1988.

And the air quality will continue to get better as we roll out the remaining steps of the existing legislation. We've only just begun.

In my plea for a pause in the legislative process I'm not saying let's cancel what we're doing and go back to the dark ages. But I am saying let's continue with the program we're on and drop the proposals to raise the bar on the high jump.

That's a philosophy that says "If-It-Ain't-Broke, Fix-It-Anyway." It is a concept we can neither accept in good conscience, nor afford in dollars.

Let's, instead, enjoy the momentum that's now underway.

FINALLY, LESSON NO. 5: WE NEED TO LOWER OUR SUSPICIONS ALONG WITH OUR EMISSIONS

What that means is that the single most valuable contribution we can make to the success of the Clean Air Act is for everyone involved—Congress, the EPA, the States, environmental groups, and industry—to make up their minds to continuously improve our relationships with each other.

That's called trust. And it can work.

When my company first sat down with the representatives of CERES well over a year ago, we found out quickly that there were more things we agreed upon than not. To our surprise they didn't really want to put us out of business and to their surprise we had already made a strong financial and operational commitment to environmental improvement—and were willing to do even more.

Similarly, in working out the regulatory details with the people of the U.S. EPA, we have found that in the quiet of a conference room, reason tends to prevail and progress is made.

I'd like to put in a plug for a similar relationship between industry and Congress. It's time for both of us to retire some old impressions. They do not serve us well.

For too long some in Congress have regarded petroleum people as arrogant and greedy, far more interested in the results of the next 90 days than the well-being of the next generation.

And some executives in industry have looked upon Congress as a big dog in a small room—and every time you wag your tail you knock over some furniture. You're the tough schoolmaster who assigns us homework we don't want to do, gives us unreasonable deadlines, and then punishes us if we don't do it right.

These stereotype images need to be retired. Mutual respect needs to triumph. Because if we make cooperation impossible, we will certainly make conflict inevitable.

The five lessons I've spoken to today are: (1) manage the process so that time and technology help keep the costs in line; (2) reach for some uniformity of standards at the State level; (3) avoid putting American businesses and American jobs in jeopardy; (4) understand first where we are before changing the goal, and (5) stimulate a new level of trust and confidence among all the partners in this adventure.

What we have here in the Clean Air Act amendments is a 3-year-old child. First it had to learn to crawl. Now it's learning how to walk. It's important that we don't put obstacles and sharp objects in its path.

Let's leave it room to grow. Point it in the right direction when we must, but keep those course corrections small ones. If we do this—if we monitor the progress instead of micro-managing it—by the year 2000 this child will grow into a world class sprinter.

As I said in the beginning, I've resisted giving out grades separately to Congress, to the EPA, to the States or to industry. This is a classroom project. It is pass/fail. We either all pass together or we go down together.

If we will but encourage and reward those industries that have shown the willingness to face environmental reality; if we can continue to have an EPA that values performance over power; and if we have a Congress that sets excellent goals, but also cuts us some educated slack so they can be achieved then I think we can look forward to a nation that will one day graduate with environmental honors that will be the standard for the entire planet.

And you know something? In the process we will not be forced to choose between our lungs and our lifestyle.

Thank you.

ADDITIONAL QUESTION FOR ROBERT H. CAMPBELL FROM SENATOR JOSEPH LIEBERMAN

1. REFORMULATED GASOLINE REGULATORY NEGOTIATION PROCESS

I know that you were involved in the regulatory negotiation process on reformulated gasoline. Is regulatory negotiation an effective approach to developing regulations? What type of frustration did you experience when the President intervened to change the proposal? What procedures should be in place to avoid that type of situation in the future?

Question. Besides the Reformulated Gasoline Regulation, what other regulations might be appropriate to approach through regulatory negotiation?

Answer. Senator, I believe the possibilities for expanded "reg-neg" approaches to be endless. I cannot imagine a more technically challenging and politically polarizing set of issues ever being confronted by such a diverse group of impacted parties

than was done in the reformulated gasoline rulemaking. If it could work there it can work anywhere.

QUESTIONS FOR ROBERT H. CAMPBELL FROM SENATOR ALAN K. SIMPSON

Question 1. I liked your comments about trust. This committee sometimes seems to have problems trusting our country's employers. Any suggestions on steps we could take to improve our respect for business?

Answer. Senator Simpson, I believe the short answer is simply to look at the results that are being achieved. Progress is being made in every area addressed by U.S. environmental laws. And in many areas, industries are exceeding mandated standards and statutory deadlines. I think our businesses have matured greatly over the first two decades of the U.S. environmental movement; acknowledge that maturity and don't "over parent" us during the next two decades.

Question 2. Our laws are based on the "polluter pays" principle. Every year, we give billions in foreign aid, some for environmental purposes? Should we require that systems built with our money charge the industrial users of these facilities appropriate sewer fees so that our foreign aid is not subsidizing our competitors' pollution treatment costs?

Answer. This proposal, conceptually, is quite similar to my environmental equalization fee suggestion for imported gasoline. Some sort of economic incentive must be applied to our international neighbors to signal the importance of mutually working to improve the global environment.

STATEMENT OF PETER BALJET, PRESIDENT, BALJET ENVIRONMENTAL

Mr. Chairman, members of the committee, I am Peter Baljet, President of Baljet Environmental, an environmental engineering and hazardous waste management firm. In the mid 1970s I served as Executive Director of the Florida Department of Pollution Control (now the Florida Department of Environmental Regulation. Today, as chairman of its National Air Conservation Commission, I am presenting comments on behalf of the American Lung Association.

The American Lung Association has testified on numerous occasions before this Committee on the health effects of air pollution, the reauthorization of the Clean Air Act, and now, implementation of the act. We have provided the committee with information demonstrating clearly the contribution of air pollution to the development and exacerbation of lung disease. The American Lung Association continues to place the highest priority on preserving and strengthening the Federal government's program to control air pollution.

The emphasis of my testimony this morning will be the health protection measures in the Clean Air Act and the act's overall impact on public health. I will also discuss a number of issues related to transportation and air quality.

By what ever measure you choose, the Clean Air Act of 1970 has succeeded in providing our nation with cleaner air. A look inside Eastern Europe gives us an idea of what our cities would look like today if Congress had not adopted the Clean Air Act of 1970. That law, for example, compelled the auto industry to develop the catalytic converter technology that is standard equipment on all cars today. The United States also began the task of cleaning up industrial pollution under the 1970 law.

A sad chapter in the success story is that for most Americans, clean and healthful air quality remains a promise unfilled more than 20 years later. One measure of progress or, in this instance lack of progress, is to examine the number of individuals living in nonattainment areas over time. The American Lung Association recently released an updated report, Breath in Danger II. (This report is an analysis of pollution classification data provided by the Environmental Protection Agency, population statistics from the U.S. Census Bureau and prevalence rates for certain medical conditions from national health surveys.) Our latest estimates are that more than 31 million children and 18 million elderly people in the United States risk lung disease or respiratory irritation because of their exposure to unhealthful levels of air pollution. The report estimates that 66 percent of Americans live in areas that fail to meet one or more of the current National Ambient Air Quality Standards. By comparison, in 1989, our estimate was that 60.5 percent of Americans lived in nonattainment areas.

Perhaps more alarming than the growing air pollution problem throughout the 1980s, was what we learned about its harmful health effects. In 1981 a research group in San Francisco reported its findings regarding sulfur dioxide and individ-

uals with asthma. They concluded for the first time that asthmatics are a group especially sensitive to the effects of sulfur dioxide and that a short term health standard should be considered for their protection. Although met with considerable skepticism at the time, today many in the scientific and public health community are concerned about the health impacts of sulfur dioxide on asthmatics and others with hyperreactive airways.

Following quickly on this discovery was the recognition of the chronic effects of ozone—smog—and the possibility that the current health standard does not provide protection for healthy people, let alone sensitive individuals. Perhaps the most striking finding, generated in EPA's own clinical laboratories, is that otherwise healthy exercising individuals—children and adults-show significant health effects after 6 to 8 hours of breathing levels of ozone below the current health standard. To understand this finding, consider your mailman walking 3.5 miles per hour delivering mail during the "smog season". By the end of the day he may have a sizable decline in his ability to breath normally, in the short term, affecting his job performance. Emerging scientific findings regarding the long term effect of such repeated exposures including structural changes to the lungs of experimental animals and permanently reduced lung function in humans, may well prove to be our nation's greatest public health issue related to the environment. ALA has long advocated an accelerated research program to address the many questions remaining in the area of health effects research.

Another way to measure progress towards cleaner, healthier air is to look at the growing popularity, if you will, of reporting daily air quality conditions as part of the weather report. Once seen only in Los Angeles, such reports are now a standard part of the weather report in many metropolitan area during the May to September "smog season". To assist with air quality reporting, local Lung Associations now issue an "ozone smog watch". Based on the next day's predicted weather, the "watch" is intended to inform the public of the increased risk of unhealthful smog levels and remind individuals to avoid outdoor exercise and other activities that may increase ozone exposure and cause adverse health effects. A "watch" is issued whenever the ozone Air Quality Index reading for the previous day was 70 or higher on the Pollution Standards Index (PSI) scale and the weather for the coming day is expected to be hot and sunny, with stagnant wind and no rain. A reading of 70 on the PSI correlates to an ozone concentration of 0.084 parts per million. The American Lung Association justifies cautioning the public at ozone levels below the current Federal standard because a growing body of research strongly suggests that adverse respiratory effects occur at ozone levels well below the current standard of 0.12 parts per million averaged over one hour.

The Clean Air Act's fundamental health protection goals are embodied in the National Ambient Air Quality Standards. These standards establish and define how clean the air should be to protect public health. Section 108 of the act requires the Environmental Protection Agency to identify all pollutants that, in the judgment of the Administrator, cause or contribute to air pollution that ". . . may reasonably be anticipated to endanger public health", and to issue air quality criteria for such pollutants that reflect" . . . the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health and welfare which may be expected from the presence of such pollutants in the ambient air. Based on information generated under Section 108, Section 109 requires the Administrator to promulgate National Ambient Air Quality Standards ". . . which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect public health." Conspicuous by its absence is the lack of any reference in this section of the act allowing for consideration of economic cost or technological feasibility in setting these standards. In fact, the legislative history of the Clean Air Act indicates that a deliberate decision was made that protection of public health and welfare was to be the sole determinant in deciding on an acceptable level of air pollution. Political, economic and technological factor were then to be integrated into the process of selecting and implementing pollution control strategies for attaining these standards.

In the opinion of the American Lung Association, the current National Ambient Air Quality Standards for ozone, sulfur dioxide, and particulate matter do not represent prudent public health policy as anticipated by the drafters of the 1970 Act. For each of these pollutants, the Environmental Protection Agency has failed to comply with the requirements in the act to review the adequacy of the health-based standards at no more than 5-year intervals. The American Lung Association has taken the action of filing citizen suits because we believe that scientific studies published since each of the current standards was adopted indicate a strong need to strengthen the standard in the interest of public health.

With regard to ozone, the American Lung Association has petitioned the United States Court of Appeals for the District of Columbia Circuit to review the final action of the Administrator of the Environmental Protection Agency regarding the March 1993 decision not to revise the National Ambient Air Quality Standard for ozone. EPA's decision was made after a 1991 lawsuit filed by the ALA succeeded in forcing the Agency to review the adequacy of the NAAQS for ozone by March 1, 1993 after failure to comply with the timeframes Stated in the act for review.

On May 25, 1993, the American Lung Association reached agreement with the Environmental Protection Agency regarding its suit against the agency for failure to review the Federal health-based air quality standard for sulfur dioxide. Under the proposed settlement, which must undergo a public comment period and court approval, EPA is required to assess whether the current sulfur dioxide standard is adequate to protect public health by May 1, 1994. Should EPA decide at that time to revise the standard, it must complete final action on a new standard by September 1, 1995. This agreement provides resolution for a suit filed in response the EPA's failure to complete review of the adequacy of the standard by the end of 1980, 1985, and 1990.

Lastly, regarding particulate matter, the American Lung Association, in a July 16, 1993 letter, notified the Environmental Protection Agency of its intent to file suit to compel the Agency to review the air quality standard for particulate matter. This suit is being considered, again, in response to the Agency's failure to comply with the requirements of the act and complete a timely review of the existing standard.

The American Lung Association believes that there are a number of opportunities to improve the standard-setting process. The National Ambient Air Quality Standards should be based on an assessment of the most recent peer-reviewed health effects and exposure data. Congress clearly limited the issues that EPA was to consider in setting the NAAQS to those issues directly related to the effects of the criteria pollutants on human health and public welfare. Issues related to economic impact and attainment feasibility are expressly excluded from consideration in this process. While the American Lung Association appreciates the executive order requirements that EPA must work under with respect to regulatory analysis, ALA believes that the Agency devotes an inordinate amount of resources to examining the economic impact of the implications of revisions to the health-based standards at the expense of undertaking the necessary reviews of the health and welfare science.

The American Lung Association believes that the Agency's past inability to meet the requirement of Section 109 of the Clean Air Act with respect to reviewing the adequacy of the NAAQS within 5 year intervals is related to several factors including:

- reiterative reviews of previously reviewed scientific information,
- inclusion of extensive information on scientific issues that are not essential to the determination of whether the standard is sufficiently protective of public health and welfare,
- an inability to "close the door" on evaluating new scientific information,
- a drastic reduction over the past decade in the Agency's staffing and resource priority and commitment to the standard review process,
- inefficiencies in the timing and staff coordination for development of the Criteria Documents and Staff Papers, and
- the amount of time required for the Clean Air Scientific Advisory Committee to review and "sign-off" on the draft Criteria Documents and Staff Papers.

The American Lung Association acknowledges its respect for the professionalism and expertise of the Office of Air Quality Planning and Standards and the Office of Research and Development Staff who are involved in the NAAQS research and review efforts. The Agency is fortunate to employ some of the world's leading scientists and professionals on air pollution health effects and risks. ALA's comments and recommendations are not intended as criticism of the performance of these staff, rather they are intended to refine the methodology by which standards are reviewed. ALA has discussed these concerns with the Agency and believes some steps are being taken to improve this process.

The American Lung Association believes that progress is being made under the 1990 amendments. However, will the promise of clean and healthful air quality for all Americans be fulfilled? Without question, most communities desiring healthful air quality have adequate Federal authority to obtain it and important clean-up programs authorized but not fully or effectively implemented previously are revitalized under the 1990 amendments. But the law is not self-executing. Congress chose to leave a majority of the tough clean-up decisions to the States through a more com-

plex State implementation plan process, and we mark Congress low for this portion of the amendments. The majority of the responsibility for air pollution control, as well as the political will needed to achieve clean air, must come from individuals at the State and local level. While the basic requirements of the act are not voluntary, adoption of air pollution control strategies will, in essence, be left to the local political situation. We believe that Congress intended to let local decision-makers determine which strategies to employ in achieving air quality goals, unfortunately the debate more often than not, is focused not on how to achieve clean air but on whether or not to employ a specific strategy.

The American Lung Association believes that it is too soon to grade States—we are just now approaching the mid-term exams for assigning initial grades for early decisions. Many States have shown innovation and diligence in the implementation of specific control strategies. Unfortunately, no one State has uniformly complied with all the statutory requirements. Of particular concern to the American Lung Association is that most, it not all, States will not be able to submit an approvable 1993 State Implementation Plan submittal that will demonstrate the 15 percent reduction in volatile organic compounds. The untimely nature of the EPA rulemaking, and therefore a low grade for the Agency, has hamstrung States that desire to move ahead in crafting air quality policies, especially those strategies requiring State legislative approval. For the same reason, States that do not wish to proceed in a timely fashion have used as an excuse for lack of action, the delay in regulations and guidance from the Agency. The blame does not usually rest on State air agencies but more often than not, elected officials are responsible for a State's failure to enact good clean air policy.

Several States have made noteworthy progress in specific areas but the shortcomings in other areas diminish or eclipse their positive actions. The State of New York's adoption of the California Low Emission Vehicle program, its recently signed clean air law and the adoption of enhanced inspection and maintenance point to the State's commitment to comply with both the spirit and the letter of the law. However, the State appears to be significantly short of meeting its 15 percent requirement for New York City. California's Low Emission Vehicle program is the world's finest. The State's reformulated gasoline will result in even greater reductions of emissions from older vehicles than the Federal program. But, the politicization of the adoption of enhanced inspection and maintenance program and the failure of the State legislature to reach agreement undercuts the expected reductions from other programs. Closer to home, the Washington Metropolitan Council of Governments approach to the 1993 SIP submittal would be laughable, if we all were not affected by the inadequacy of their decisions. A review of discretionary strategies resulted in episodic controls on personal lawnmower use—a strategy that will not lead to meaningful improvements in air quality.

Moving now to the remaining issues before the committee this morning, I would like to first explore progress in the area of transportation and air quality. Motor vehicles remain the dominant source of emissions responsible for "smog". While automobile emissions have been regulated by the Federal Government since the late 1960s, the percentage contribution from mobile sources to total emissions, with the exception of lead, has not changed appreciably. Growth in vehicle miles travelled, higher than expected in-use emissions and less stringent control on other mobile sources are reducing the overall gains from the automobile standards. Because motor vehicle emissions remain such a high percentage of total emissions, significant additional reductions of pollutants from mobile sources have the potential to result in substantial overall air quality improvements.

During the debate on the reauthorization of the Clean Air Act, the American Lung Association consistently supported strengthening the automobile emissions standards to mirror the program in California. Unfortunately, significant strengthening of the Federal program did not occur and we mark Congress low for this action. Fortunately, however, Section 177, allowing States to opt-in to the California program was retained. We mark the Senate high for protecting this section of the act.

The American Lung Association has now turned its advocacy efforts towards encouraging many States, including those in the Northeast Ozone Transport Region, to adopt the California Low Emission Vehicle program. States with serious and severe air pollution problems are required to attain significant emissions reductions beyond those which are possible from the Federal vehicle program. Failure to maximize the reductions will mean even greater demands on local industry than have already been mandated.

Currently, State legislatures and the Federal courts are confronting unresolved issues surrounding the Low Emission Vehicle program. Some legislatures are con-

templating abandoning the adoption of the program because of the undecided issues of SIP credits and cross-border sales. These actions are occurring in spite of assertions from State regulators that emissions reductions from the LEV program are substantial and necessary for attainment and maintenance of the health-based standards. Without the LEV program, several States will not be able to write approvable implementation plans. This failure may lead to a variety of scenarios including sanctions, Federal implementation plans or protracted litigation. The American Lung Association does not believe that any of these outcomes will lead to expeditious attainment of the healthbased standards.

The American Lung Association has supported an unconditional waiver by EPA of Federal preemption of California's low emission vehicle standards. ALA is also concerned about the future of the California Low Emission Vehicle program as a viable opt-in strategy for other States. The ALA has urged the Agency to explicitly support the right of States to opt-in to the program, including support for New York and other States in their litigation.

The American Lung Association has also urged the EPA to allocate appropriate and substantial SIP credits for Low Emission Vehicle programs. Further, we ask EPA to continue the 1994 cross-border sales policy. EPA should receive high marks for its prompt decision to resolve many of the cross border issues.

Enhanced inspection and maintenance is another transportation issue of great concern to the American Lung Association. A strong, effective program must be the cornerstone of a comprehensive motor vehicle pollution control strategy for the 1990s and beyond. Abandoning high quality inspection and maintenance would seriously undermine the ultimate success of the 1990 amendments. Unfortunately, enhanced inspection and maintenance did not get off to a good start and again we would give the agency a low grade. EPA's rulemaking was very late, delaying full implementation of the program by several years. However, the final rule was a very strong regulation and one that ALA wholeheartedly supported.

The American Lung Association believes that an effective inspection and maintenance program requires the separation of test and repair. There is significant evidence demonstrating that decentralized inspection programs, which take place in facilities which combine testing of vehicles and repair of vehicles, are not equivalent to centralized systems. The very best of such programs bring about substantially less emissions improvements than centralized facilities and generally have higher costs.

The ALA is extremely concerned about recent events in California. As you know Mr. Chairman, California's legislature has attempted to pass inspection and maintenance legislation that falls considerably short of an enhanced program. EPA attempted to negotiate a compromise with State Senator Presley to permit test and repair on certain retests, even though the Agency recognized that this would diminish the efficacy of the program for those cars utilizing the so-called "gold shield" test and repair station. Apparently the Agency felt that their performance standard for the program would still be met because of other additions the program would incorporate. The American Lung Association disagrees with the Agency's departure from a test-only approach and hopes that the Agency, in examining other States' programs, will be resolute in its rejection of decentralized programs.

Under no circumstances should the Agency allow State legislatures, even temporarily, to avoid the implementation of high quality inspection and maintenance programs. The State air pollution control officials themselves recognize the benefits of strong programs. The Northeast States for Coordinated Air Use Management, the State and Territorial Air Pollution Program Administrators, the Association of Local Air Pollution Control Officials and the Ozone Transport Commission have all strongly endorsed centralized, test only programs.

Although I know the Californians here will disagree, the inspection program they attempted to pass is merely a continuation of the status quo. Administrator Browner agreed to work with the legislative leadership in California to allow it to workout an acceptable inspection and maintenance program delaying sanctions. We hope California will act quickly to comply with the law. It the State does not, in our opinion, EPA must move ahead with sanctions expeditiously.

One last comment about inspection and maintenance. According to a recent Gallup survey conducted for the American Lung Association, a significant majority of car owners support changes in inspection and maintenance programs that are more effective in lowering emissions. Motor vehicle owners draw the line, however, at regulations that restrict how and when they can use their car. A requirement that all vehicles be tested annually for emissions is favored by 82 percent of Americans. Likewise, 87 percent support improvements in testing systems so the vehicle

emissions can be more accurately measured and large majorities favored details of proposed test-only programs.

The issue of transportation conformity is also a concern of the American Lung Association. Section 174 of the 1990 amendments requires that the Environmental Protection Agency promulgate criteria and procedures for determining that transportation plans, programs and projects conform to the relevant air quality implementation plan. We mark the Agency low in this area for once again the Agency has not completed rulemaking in a timely fashion. Further, several aspects of the proposed rule would result in conformity determinations that would not be consistent with the requirements of the act including:

- Timeframe: Although the act clearly specifies that the interim conformity requirements are in effect only until the revised SIPs, which were due November 15, 1992, are approved; EPA has unilaterally determined that the interim conformity period be extended until the control strategy SIP revisions are approved. However, the proposed rule does not require submittal of such provisions until 1 year from final promulgation of the rule. Even under the most optimistic of scenarios, it is unlikely that the revised SIPs that include transportation conformity provisions will be approved by EPA and the Department of Transportation until at least 1995. ALA believes that EPA's proposal to extend interim conformity requirements violates the requirements of the act.
- Annual Emission Reductions: Section 176 requires that under interim conformity requirements, conforming transportation plans or projects must contribute to annual emission reductions from the 1990 inventory base year in ozone and carbon monoxide nonattainment areas. It is essential that the Phase II interim guidance require that transportation plans or projects are consistent with the achievement of the 15 percent VOC reduction and subsequent 3 percent annual reductions from the 1990 baseline. Under EPA's proposal, required reduction would be far less.
- Baseline Calculation: EPA's definition of the baseline scenario for the Phase II interim period, which would allow for inclusion of transportation projects that are under construction or under going right-of-way acquisition, or projects contained in the first 3 years of the previously conforming Transportation Improvement Program or that have completed the NEPA process, is so broad that it subverts the Congressional intent that adoption of such projects contribute to annual emission reductions.
- Geographic Applicability: The proposed rule limits the conformity requirements to major transportation projects in nonattainment areas only. The ALA believes that conformity requirements must also apply to areas immediately surrounding nonattainment areas to assess their impact on the emission reductions required under the corresponding nonattainment area SIP. The ALA also believes that maintenance areas that were designated as such prior to the requirements of the 1990 amendments should also be included in the universe of areas required to assess conformity.
- Nonfederally Funded Projects: The conformity proposal reverses EPA's previous interpretation of the requirements of Section 176 as limiting the application of the conformity analysis to only federally funded or approved transportation projects. However, the 1990 amendments clearly indicate that such a limitation not apply.
- Interagency Consultation: The proposed rule limits the role of State air pollution control agencies to providing consultation to metropolitan planning organizations on conformity with their respective SIP. This proposed consultative relationship is insufficient to ensure that criteria and procedures for demonstrating conformity are carried out.

Our last comments in the area of transportation concern reformulated gasoline. Reformulated gasoline offers the promise of cleaner air and is one of a few available strategies that has immediate impact on the existing motor vehicle fleet with very low cost and ease for States to implement. The regulatory negotiation was completed in August 1991. However, over 2 years later there is no final rule. The failure to act does not rest with the EPA but with an industry and members of Congress who have politicized this issue beyond a "technical merits" debate. The proposed rule will not accomplish the mandated reductions envisioned in the 1990 amendments. The effects of commingling different gasolines, the running losses and evaporative emissions and the tailpipe emissions all add up to higher emissions. The complexity of the proposal could also lead to major enforcement difficulties.

In July 1992, over 14 months ago, the American Lung Association joined with you, Mr. Chairman, decrying the logjam of regulations at the Environmental Protection

Agency. Much has happened since then including a change in administration. Ultimately, the single largest barrier to cleaning the air is the failure of rules to be promulgated in a timely manner. You have asked us to grade EPA, Congress and the regulated industries. Mr. Chairman, when I was in school, we were downgraded a letter grade for every day an assignment was late. Congress took 10 years to revise the act and has held only three to four hearings in both houses since its passage. The EPA is in a virtual state of receivership, being governed by court imposed deadlines negotiated long after the act's deadlines. The grading system I described would result in very low marks across the board. But ALA remains optimistic—the Agency staff no longer spend months negotiating with other agencies, councils on competitiveness and navigating the perils of a presidential election. We hope the new trustees will restore the Agency.

It is important to note, however, that the timeframes in the act continue. We are only a few months away from the submission of the 15 percent SIPs. The States have become so frustrated at the wait for guidance from the Agency that STAPPA/ALAPCO will publish a menu of options for States to use in writing these SIPs next week. We commend STAPPA/ALAPCO for taking this action, but wonder if the States will be able to promulgate the necessary regulations in time to complete their SIPs.

Mr. Chairman, this committee needs to have regular and frequent oversight hearings. The American Lung Association also recommends greater attention be placed on securing adequate resources for the Agency to properly implement the 1990 amendments. The ALA has appeared for many years before the Subcommittee on HUD/Independent Agencies advocating for increased resources for the Agency to implement the act. Unfortunately we have not met with much success. It is time for this committee to take an active leadership role in ensuring adequate resources for the Agency.

The American Lung Association will celebrate the 45th Clean Air Week next year. This week was begun to commemorate the air pollution disaster in Donora, Pennsylvania in 1948. The week reminds us that air pollution control is a partnership—citizens, government and industry working together to achieve clean air. As we move toward the next century, this partnership remains integral to our efforts to make the Clean Air Act Amendments of 1990 fulfill the promise of clean and healthful air quality for all Americans. Thank you.

Fran Du Melle
Deputy Managing Director

Washington Office
1726 M Street, N.W
Suite 902
Washington, DC
20036-4502
(202) 785-3355
FAX (202) 452-1805

National Headquarters:
1740 Broadway
New York, N.Y.
10019-4374

John R. Garrison
Managing Director

When You Can't Breethe, Nothing Else Matters™

Founded in 1904, the American Lung Association includes affiliated associations throughout the U.S., and a medical section, the American Thoracic Society.

AMERICAN LUNG ASSOCIATION®
The Christmas Seal People®

October 5, 1993

The Honorable Max Baucus
Chairman, Senate Committee on
Environment and Public Works
456 Senate Dirksen Building
Washington, D.C. 20510

Dear Mr. Chairman,

I would like to provide clarification for answers to questions posed by members of the Committee to Peter Baljet at the September 14 hearing on the implementation of the Clean Air Act Amendments of 1990. This clarification is provided on his behalf.

Question: The Position of the American Lung Association on the proposed Reclaim project in California

Attached for your information is the position developed by the American Lung Association of California on Reclaim. As you will note, our constituent association in California is in opposition to the project as it is currently drafted. Included with Mrs. Meade's correspondence are eleven points that discuss the ALA of California's concerns about Reclaim. Please note these points were developed in cooperation with the Natural Resources Defense Council and the Coalition for Clean Air.

Question: The position of the American Lung Association regarding enhanced inspection and maintenance in California

As stated in the American Lung Association's written comments, we believe that an effective program requires the separation of test and repair. There is considerable evidence demonstrating that decentralized programs are not equivalent to such centralized program.

The ALA of California has been and will continue to be an active participant in the process to adopt legislation providing for an enhanced test-only program. ALA believes flexibility has been provided for in the final rule adopted by EPA. We disagree with EPA's departure from a test-only approach, in their negotiations with State Senator Presley and the California legislature. ALA is optimistic that EPA will require an I/M program that will meet the test-only performance standard outlined in the rule. ALA believes

there are no circumstances which merit the avoidance of implementation of a high quality program in California or other states required to implement enhanced inspection and maintenance.

ALA encourages EPA and the California legislature to continue discussions on enhanced inspection and maintenance. Such discussions should continue to provide for public participation by organizations such as ALA of California. However, should California fail to adopt a program meeting the requirements of the EPA rule, ALA believes EPA must proceed with sanctions as required in the 1990 Amendments.

According to a study conducted by Booz-Allen & Hamilton for the Coalition for Cleaner, Safer Vehicles, if California adopts the enhanced test-only inspections program, overall employment in the emissions testing and repair areas will increase from 2,369 to 4,006. Test-only inspection and maintenance programs are cost effective and create jobs. According to a study prepared for the American Lung Association by Pechan & Associates, the cost per ton reduced from an enhanced I/M program of volatile organic compounds is $500 and for nitrogen oxides is $1,850. The study reports that to obtain additional reductions from stationary sources range from $500 to $9,600 per ton of VOC and $1,500 to $15,000 per ton of NOx. The Pechan study also concludes that the total VOC reductions achievable from the stationary source control measures are well below the reductions achieved from enhanced I/M.

Question: Recommendations for action by EPA regarding the Low Emission Vehicle program in New York

The American Lung Association is on record in hearings before the Northeast Ozone Transport Commission in support of the adoption of the California LEV program in all states within the region. ALA is concerned that without the LEV program, several states will not be able to write approvable implementation plans. ALA has supported an unconditional waiver by EPA of federal preemption of California's LEV standards. We have also urged the Agency to explicitly support the rights of states to opt-in to the program including support for New York in their litigation.

The American Lung Association will be filing an amicus curiae brief regarding the litigation in New York. This will be shared with the Committee when available.

If I can be of further assistance or provide additional information, please feel free to contact me.

Sincerely,

Fran Du Melle
Deputy Managing Director

attachment

cc: Members, Environment & Public Works Committee

Southern California Office
P.O. Box 7000-866
Redondo Beach, California 90277-1710
Tel. (310) 378-3950
Fax (310) 378-5033

AMERICAN LUNG ASSOCIATION *of California*
The Christmas Seal People®

September 9, 1993

Mr. Henry Wedaa
Chairman, SCAQMD Board
21865 East Copley Drive
Diamond Bar, CA 91765-4182

Dear Hank:

The American Lung Association of California wishes to testify on Friday, September 10, 1993 on Reclaim. We would appreciate an early spot on the list of those presenting testimony at the public hearing.

Our testimony will be in opposition to the Reclaim program, although I can assure you, it will be brief. We have submitted extensive comments to District staff in conjunction with the Natural Resources Defense Council and the Coalition for Clean Air. All three organizations have arrived at similar conclusions on Reclaim although our individual perspectives may differ somewhat.

Attached are eleven points that constitute our issues of concern with Reclaim. Please share them with other members of the SCAQMD Board.

I know you are aware of the strong commitment of the American Lung Association of California and its four South Coast local chapters to support the District in its mission to clean the air. We have tried to be partners in this effort.

It is with regret that we find ourselves opposing Reclaim. We recognize that District staff worked to balance divergent viewpoints. That we disagree, at this point, does not negate appreciation of the hard work done.

We look forward to testifying and ask only for your full attention and consideration of the points we raise.

Yours truly,

Gladys Meade
Vice President, Environmental Health

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AMERICAN LUNG ASSOCIATION OF CALIFORNIA

TESTIMONY AT PUBLIC HEARING ON RECLAIM

September 9, 1993

The following issues have led to the ALAC decision to oppose RECLAIM, as currently drafted.

1. Representatives of the ALAC have participated in the RECLAIM process for over two years, since the beginning of RECLAIM, trying to work out a program that adequately protects public health at least cost to region.

2. We have reviewed many documents and attended many meetings and briefings, at considerable cost to a public interest organization relying principally on volunteers.

3. The initial premise was that RECLAIM would achieve the 1991 reduction target for RECLAIM sources and that it would not be necessary to revisit every proposed rule and engage in future debate over emission factors, initial allocations, ending allocations, etc.

4. To achieve this certainty, the ALAC has accepted many revisions to the 1991 AQMP, as originally adopted, that delayed emissions reductions with consequent delays in reducing health impact exposure. At first, these delays were caused by the delays in substituting RECLAIM for the rule schedule in the 1991 AQMP, resulting in approximately a 3 year delay.

5. Now, because of initial allocations that let facilities select their highest year, leading to initial allocations that are, in aggregate, up to 20% higher than actually occurred in any of the selected base years. These allocations were made to protect against recessionary effects on RECLAIM facilities. However, no documentation has been provided that the leading beneficiaries of the program have actually been impacted by these recessionary effects. The net result is that between the rule delay and the over allocation, real emission reductions will not begin to occur until 1997--six years after the 1991 AQMP was adopted.

6. In addition, facilities are allowed to substitute other means of achieving the reduction target for the control technology in the subsumed rules and the 1991 AQMP control measures, such as equipment shutdowns that could formerly only be used to offset emissions from new equipment, not rules, use of mobile sources to offset stationary sources, even if reductions from these sources had already been accounted for in the 1991 AQMP motor vehicle control strategy, potentially leading to some double counting of emission reductions.

7. The RECLAIM program, as proposed in July, also locked RECLAIM sources into 1991 technology (although advancement of this technology through Tier II was included.)

ALAC asked that a provision be added that would require a reevaluation of technology in later audits to determine if further cost effective reductions were warranted. The District in its 1992 publication on RECLAIM, which followed extensive analysis and design of the program, declared that additional NOx reductions would be required between 2003 and 2010 to achieve the state PM10 standard. The District declined to include this language--instead leaving the decision to the 1994 AQMP to determine if additional reductions were needed to attain standards, but not making any requirement for review of the RECLAIM targets for incorporation of new, cost effective technology. Little new information on advanced technology will be available in 1994 to change these targets.

8. Despite the lengthy public participation process, on September 3 the District issued major changes to the July Draft rules under the heading "Refinements and Clarifications." These changes have the potential to raise both the starting and ending allocations, thus eliminating any possibility of parity with the 1991 AQMP emission targets, despite the allowance for multiple, and less stringent, ways to reach these targets.

9 These changes, among other things, depart from the 1991 AQMP and defer a number of issues to the 1994 AQMP. Therefore, we public interest organizations must fight to hang on to promised reductions, rather than being able to rely on RECLAIM as the vehicle for achieving the 1991 AQMP, even as previously delayed and possibly weakened.

10. Most troubling to a public interest organization is that these substantial changes were not circulated even to the Steering Committee and Advisory Committee that have participated throughout the process, let alone to the mailing list and the general public. The comments were released only to people who happened to be at the District, and required that all comments be made back to the District by 5 PM on Tuesday, September 7. This four day review period occurred over the three day Labor Day weekend, which precluded any kind of detailed review or even access to people who would have information to respond to questions.

11. Therefore, because of the continuing delay in achieving the long promised health benefits of the 1991 AQMP and because of the potential to fall substantially short of the already lessened benefits of the 1991 AQMP shown in the July Draft, the ALAC opposes RECLAIM, as presently drafted, and requests that the governing board of the SCAQMD send the document back to staff for reanalysis of the impacts of the September changes and to take whatever steps are necessary to insure that the 2000 and 2003 targets for covered sources shown in the July Draft do not change.

ADDITIONAL QUESTION FOR THE AMERICAN LUNG ASSOCIATION FROM SENATOR JOSEPH LIEBERMAN

Question. One of the innovative approaches to implementation of the Clean Air Act Amendment has been the use of regulatory negotiations. This approach favors consensus building that avoids litigation. As you know, EPA initiated a regulatory negotiation process with respect to reformulated gasoline. One of the most frustrating events of the last several years has centered on what happened with respect to this process. After all parties—industry, States, environment, and the Administration, had reached and agreement, one party to the agreement—the ethanol industry—went to the President and had the agreement changed in a manner which, according to representatives of the States, is extremely detrimental to air quality. The entire regulatory negotiations process was completely undermined.

Would you comment on this issue.

Answer. The American Lung Association has participated in several regulatory negotiations including the negotiations on the rules for paints and coatings and off-road engines.

ALA remains concerned about the reformulated gasoline regulatory negotiation. Although ALA was not a party to the negotiation, we initially saw great promise from the outcome. The negotiated rule represented a very positive outcome for health and the environment. All affected parties were represented at the table. We are disappointed that the ethanol industry has attempted to reopen this issue. The rationale for the special treatment for ethanol is not scientifically sound and jeopardizes the efficacy of the program. The concept of "Reg-Neg" only succeeds when the affected parties negotiate in good faith. Attempts to reopen settled issues in Congress or the courts undermines the entire process and the efficiency it is designed to promote.

Another area of concern, although not specifically regulatory negotiation, is the Administration plan to create a national industrial policy, as manifested in programs like the "green car initiative", without public participation. The public and interest groups such as the American Lung Association have a unique perspective and merit a seat at the table as is the process for negotiated rules. Without a broad public participation, the potential for success of these programs is limited and public confidence in these programs is diminished.

STATEMENT OF MELVIN D. SHERBERT, PRESIDENT OF THE SERVICE STATION DEALERS OF AMERICA, INC.

Mr. Chairman, members of the committee: My name is Mel Sherbert. I am an Amoco dealer in Suitland, Maryland. I also serve as President of the Service Station Dealers of America (SSDA), which is the voice of America's independent service station operators and garage owners.

I am accompanied by our General Counsel, Jim Daskal, who has appeared before this committee on several occasions on this and other issues and will assist me in answering questions.

The Clean Air Act Amendments of 1990 have impacted our members in three principal areas:

A. Stage II Vapor Recovery Requirements;
B. Vehicle Inspection and Maintenance; and
C. Motor Fuel Policy, including the development of reformulated gasolines, oxygenated gasolines and alternative motor fuels.

Regrettably, SSDA and other groups have found it necessary to engage in litigation with EPA over the first two matters, and the product of an extensive "reg/neg", on reformulated fuels was nearly the victim of last minute political maneuvering. We await the rulemaking with great apprehension.

Thus, we cannot give EPA anything other than a failing grade on their efforts to date.

Mr. Chairman, this is a situation that distresses us greatly because our members are local business people, not corporate managers in distant cities; rather we must breathe the air we are responsible for helping to keep clean.

EPA must be willing to act as a friend of those businesses, especially small businesses which are trying to do the right things.

To date, EPA management of the Stage II and inspection and maintenance rules threaten thousands of dealerships and tens of thousands of jobs. This must change and we would like to offer some suggestions.

First, EPA's economic analysis of proposed rulemakings, particularly with respect to small business, needs substantial improvements. For example, the Inspection and Maintenance Regulatory Impact Analysis is an utter failure that does not even get readily available service station population counts right and relies on numerous bald assertions instead of facts.

Survival in today's retail gasoline market is predicated on a strong ancillary business, be it auto repair or convenience store sales, as profit margins on gasoline are low. Dealers in States such as California, New York, Pennsylvania, and Virginia are far more reliant on inspection-related business than EPA estimates. EPA's rule would devastate these businesses and the thousands of jobs they provide.

We suggest that EPA economic analysis be subjected to a review by the Small Business Administration, OMB, and independent outside review with appropriate expertise.

The second and most vital point is that EPA must do a better job of weighing the effect of one rulemaking upon another; and the States must do so as well.

What I mean by this is that very often the Air Office may issue a regulation or regulations that may impede compliance with or even conflict with regulations issued by other shops at EPA (or State equivalents), such as the Water Office.

States with moderate non-attainment areas, such as Nashville, Tennessee, began to propose Stage II in their SIPs.

As a result, Tennessee dealers whose businesses were just starting to recover from the underground tank rules, are now faced with "breaking concrete again," shutting their businesses down, and spending compliance costs that greatly exceed what would have been required had there been coordination between the rulemakings.

Before issuing any future rules EPA should be required to do the following two things.

1. The Agency should make specific findings on the effect a proposed rulemaking has on other rules, both those in effect and those proposed that may affect a particular industry, particularly those from departments within EPA other than the one who has jurisdiction over the proposed rule; and

2. The Agency should make specific findings on the cumulative effect of all its rules on a given industry, and the incremental effect of its proposed rules, before such rules can take effect.

Service station dealers are currently faced with attempting to comply with over a dozen major environmental rulemakings, a task that is difficult for our attorneys and environmental consultants, much less for the small businessman or woman who is trying to support a family.

Aside from the fact that EPA needs to evaluate the interplay between such rules, the sheer volume of rules applicable to our industry tells us that small business needs help in complying with such rules.

This brings me to our third point which is: What assistance can the Agency offer small businesses in their efforts to comply with the act's mandates?

The Small Business Technical Assistance Program mandated by Section 507 of the act has been of assistance to some other small business groups; however, we know that they are calling for EPA to provide more aggressive promotion of the program and greater resource allocation to it.

For service station dealers, more is needed than simply technical assistance. Knowing how to comply is one thing; having the means to comply is something else.

We believe that commercial lenders have "red lined" our industry; obtaining capital to comply has in many cases proven impossible.

Many resources of capital fear that they will inherit liability, particularly for underground storage tanks and piping that must be upgraded to install Stage II or handle alternative fuels. As a result, obtaining the capital we need to comply with the regulations under the act has been very difficult.

We have suggested that the permitted uses of the Federal Underground Tank Fund be expanded in order to provide gasoline retailers the means to comply with Federal regulations by providing a combination of low interest or guaranteed loans and grants to upgrade tanks and related equipment.

Congress should consider other ways to help us comply such as providing favorable tax treatment to small businesses which are attempting to comply with environmental regulation.

I cannot impress upon you enough just how costly Clean Air regulation is. Stage II costs have been running at the high end of estimates, with costs running $50,000 or more in some areas.

Fuels programs inflict increased costs on refiners, who pass the costs on to dealers. Dealers in highly competitive markets, such as the Maryland market compete in, cannot pass all of them on.

To add insult to injury, EPA threatens to take away our means to comply with their illegal I&M rule, at a time when more capital is needed.

Fourth, steps must be taken to halt what we see as a disturbing trend that pits big business against small business, when big business attempts to avoid regulations by having EPA hammer small business.

For example, some oil companies and auto makers have pushed for EPA's "IM 240" program, while at the same time saying that adoption of such a program should prevent a State from adopting a "Low Emission Vehicle" or "California Car" program, and thus requiring oil companies to market fuel for such cars. Regrettably, some EPA officials have openly promoted this conflict. While we also question the environmental benefits of a LEV program, we are more disturbed by that "big vs. small" conflict which has bogged down the Superfund program, will do nothing but impede efforts to clean up the air. EPA should be discouraging, not encouraging, such conflicts.

With these considerations in mind, let us now turn to the questions Chairman Baucus requested we respond to in the letter of September 9.

1. Health Effects

Although SSDA does not have the resources to do our own testing, available data seems to strongly indicate that air quality, particularly with respect to urban ozone, appears to be improving.

With respect to air toxics, we are pleased by the efforts of the refiners to reduce levels of benzene, toluene and xylene in gasolines. Such efforts can only do good with respect to both air quality and the reduced exposure dealers such as myself, as well as our employees, will face.

2. Transportation Issues

EPA's record in following the mandates of the law in this area is quite frankly abysmal.

As previously noted, EPA abruptly canceled a pending rulemaking requiring onboard vapor recovery canisters on new cars, forcing environmentalists and petroleum marketers to file suit in the U.S. Court of Appeals for the District of Columbia to force EPA to comply with a non-discretionary duty under the act.

The Court held that EPA had in fact violated the law and ordered the Agency to promulgate a rule requiring onboard vapor recovery canisters to be placed on new vehicles.

Another area in which EPA has failed to honor Congressional intent is with respect to the issue of enhanced inspection and maintenance programs.

SSDA has previously testified before this committee several times, as far back as 1986, on the need to enhance vehicle I&M programs; and we note that the committee agreed with our position both in legislation reported in the 100th Congress, as well as in the legislation that actually passed. In addition, SSDA met with EPA officials who took the position that enhanced I&M programs would yield only a 2 percent V.O.C. reduction, the same as Stage II. In fact, enhanced I&M was viewed as an alternative to Stage II, particularly in those States affected by the transport provisions, namely the Northeast Corridor.

The act required EPA to issue guidance on I&M, as opposed to a rule, and the legislation contains a "laundry list" of items that were to be included in the definition of enhanced I&M. EPA missed its deadline by over a year, and only came out with something after being sued by environmental groups.

When EPA came out with something, the something was a binding rule, not the guidance required by the act.

Next, the act requires that the guidance contain a " performance standard achievable" by a combination of computerized emission analyzers, higher repair cost waivers, enforcement through denial of registration, and other factors listed in the act.

EPA did not follow the congressional mandate. Rather it substituted its own system—the "IM 240"—and has repeatedly told the States that the performance standard is not achievable by anything other than EPA's "one size fits all" system.

The GAO found that the EPA system does not come close to the results EPA predicted, producing inconsistent result in over 30 percent of the cases.

EPA also ignored real world data from California and other States where consumers have rebelled against centralized systems, as well as the only program similar to the one EPA is attempting to force on the States.

That program is in Vancouver, Canada, and is most noteworthy for producing 3-hour lines, as opposed to air quality benefits. EPA instead claims consumers will love their program, citing a dated phone survey sponsored by centralized I&M contractors, done by a tiny Annapolis, Maryland, "research group." This is the kind of activity that leads Americans outside the Beltway to view our government as run by

out-of-touch, unrealistic bureaucrats who have lost all feel for the real world. The loss of respect for our fundamental institutions causes is deeply troubling to us.

EPA has gone even further, with some officials threatening to "personally see to it" that States are sanctioned on November 15 if they fail to adopt IM 240. This shows total disrespect for the Administrative Procedure Act and other legal safeguards, as well as the clear mandates of Congress.

Even when States such as New Jersey and California have proposed systems that would achieve the same air quality benefits as EPA's system, at a fraction of the cost and consumer inconvenience, EPA has balked. It is an example of the "Not Invented Here" syndrome.

After doing so much to destroy our businesses, EPA expects us to invest tens of thousands of dollars in "repair grade IM 240" in order to repair cars; yet such investment (assuming the capital is available) can only be justified if our members can continue in the inspection end of the business.

Our members are willing to invest in such equipment; unlike Stage II, it is an investment that we get some return on. We would be able to provide enhanced I&M test lanes at approximately $30,000 per lane as opposed to the $150-$300,000 per lane required by the EPA system.

That EPA has thumbed its nose at Congressional intent is clear. Surely, Congress did not intend to set out the elements of a performance standard and then deny the States all flexibility as to how to meet that standard, as EPA would do. Of course, EPA may believe that reducing the number of test lanes in California from 20,000 to 500 or so won't make any difference to the American motorist.

As a result of all this, SSDA, along with the National Automobile Dealers and other organizations, has been forced to sue EPA to require the Agency to follow the law. As an association that has prided itself on our ability to cooperate with other shops at EPA, State and local officials, as well as civic leaders in our communities, we find this turn of events most distressing.

SSDA has never been a group to say "do not regulate us." We have tried to take a constructive approach to air and other regulation by saying let us regulate sensibly and let us provide small business with the means to comply.

We look forward to working with Ms. Browner and her staff to improve EPA's score in this regard, and I for one would rather see my association's resources put to some other purpose than fighting EPA, especially in court.

3. State-Federal Relations

Again, from our experience, we cannot give EPA a passing grade.

We have previously discussed EPA's failure to honor the fundamental State-Federal partnership that the Clean Air Act unequivocally mandates, particularly with respect to the inspection and maintenance issue.

Rather than promote their system on its merits, EPA has tried to bludgeon the States with threats of highway-fund sanctions if they do not accede to the anti-consumer EPA system.

This brings us to our next point which is EPA's sanction-threats breach the confidence that States place in EPA.

EPA officials repeatedly try to leave the impression that if a State fails to adopt IM 240 by November 15, all highway funds will be cut off on November 16.

No mention is made of the proposed notice and comment procedures that must be followed or the list of projects, such as safety-related projects, that can never be made the subject of sanctions. States place a great deal of trust and confidence in EPA's expertise. Only a few States such as California have the expertise to counter EPA when the Air Office goes wrong.

Thus, when EPA officials lose their objectivity and fly around the country threatening States with things they have no authority to impose, all in the name of promoting an EPA-invented system, something is seriously wrong. The threats have credibility only because of the trust the States place in EPA a trust we feel is being breached.

We also fail to understand how EPA officials can claim to speak for an Administration that is pledged to get the economy going again when they threaten States in economic distress, such as California, with sanctions that will put even more people out of work, all in the name of a program that will devastate the small businesses that have been responsible for most of the recent job growth in California and other States.

The situation becomes more troubling when you consider the highway fund sanction cuts at the very programs that were crucial to the President's ill-fated economic stimulus package. In some cases EPA overplayed its hand and has angered State officials with these threats.

Rather than threaten people, we hope the Agency will adopt a more constructive approach under Ms. Browner's guidance, an approach that honors the role of the States and State flexibility in devising plans to meet Clean Air goals.

In our other area of hands-on experience, Stage II vapor recovery, we have been disturbed by the amount of time it has taken for the Agency to clarify what it expects of those moderate non-attainment areas which are not compelled by the statute to install Stage II.

As previously noted, this delay has been responsible for some moderate areas proposing to adopt Stage II, a scenario that distresses us for several reasons.

These reasons include the fact that requirement of Stage II in moderate areas will exacerbate existing shortages of both contractors and equipment. Fundamental laws of supply and demand dictate that an already costly program will become more costly.

It is also a program that does not appeal to our lenders, not only due to liability fears but also because it is an investment that yields no monetary return to the small business owner.

We are sure that EPA is performing much better in other areas of implementation of the 1990 amendments, and hope that other groups do not share our dismal experience.

4. Market-Based Initiatives

SSDA has no first-hand experience with these programs and could provide only second-hand, anecdotal evidence of the degree of success in implementing these initiatives.

5. Technology Development

Our experience with the Agency in this area is also not good.

In the inspection and maintenance area, EPA has actively discouraged innovative and alternative technologies.

SSDA also sees the need for greater encouragement by the Agency in developing cleaner burning motor fuels, be they cleaner burning gasolines or alternative fuels.

Such efforts should be coordinated with the Department of Energy, as fuels policy is an issue that involves critical national interests that go beyond environmental considerations. The Agency should be an ally, not an adversary, of private sector efforts to develop these new fuels, and should be willing to publicly commend those companies that do make a "better mousetrap" or fuel.

6. Timeliness

We have extensively discussed the Agency's repeated failure to meet statutory deadlines. As a result of failing to meet these statutory deadlines, EPA leaves the States in a most untenable position. This means environmental programs (including SIPs) are to be promulgated and implemented within unreasonable time limits. In addition, the threat of stiff penalties exists if States cannot meet the set deadline. This often leads to the accelerated creation of ineffective and inefficient programs that may not even contribute to cleaner air. While we have not had the opportunity to analyze the Vice President's Report on Re-Inventing Government, we hope that suggestions are made to streamline the process so deadlines are met in the future.

Given Vice President Gore's keen interest in environmental affairs, perhaps EPA can be among the agencies to adopt those recommendations and become a role model for other agencies.

7. Innovation

We believe that innovation will be critical to ultimate attainment of clean air goals. We are not at all certain that the simple ratcheting down of mobile and stationary source emissions will be enough, particularly in cities with the most intractable air problems.

We believe the act does provide a framework for innovation to occur and we encourage the Agency to further the development of market-based initiatives to our air problems.

INDUSTRY IMPLEMENTATION

1. Chemical—Our only experience is with CFC manufacturers of auto air conditioning refrigerant and substitutes thereof.

We are pleased to see a great deal of effort being spent on developing substitutes for refrigerants; thus it appear a good job is being done.

2. Utility—We note that many utility fleets are experimenting with alternative fuels, primarily those based on natural gas, such as that being tested at an Amoco station on Pennsylvania Avenue. We encourage more widespread testing.

3. Auto—Today's automobiles do run cleaner and we encourage the industry to continue with the joint oil-auto research into developing synergistic combinations of vehicles and fuels which hold great promise for improving air quality.

Other innovations, such as preheated catalytic converters, should also be encouraged.

4. Oil Industry—While most members are used to the fighting between dealers and oil companies over marketing issues, the companies do deserve commendation in some areas for their efforts.

For example, my company, Amoco, has moved quickly to install Stage II vapor recovery where required, and has innovated by developing the vacuum-assist nozzle that does not require the cumbersome boot.

The companies are spending tremendous amounts of money on development of new and alternative fuels, both within and outside of the auto-oil project; and this should be encouraged.

5. Manufacturing—We have no hands-on experience.

6. Small Business—We give ourselves generally good marks for what has been done to date. Much, however, remains to be done and our members, as well as other small businesses will need both technical and financial assistance if our willingness to get the job done is to translate into an actual result of having gotten the job done.

CONGRESS

We can only say that a good job has been done in dealing with an extraordinarily complex subject. We hope that there will be more oversight of the program and look forward to working with the Agency and the Hill as friends and partners in achieving our air-quality goals.

STATEMENT OF JOSEPH SULLIVAN, SENIOR VICE PRESIDENT, CIBA-GEIGY CORPORATION

Thank you Mr. Chairman and members of the Committee for inviting Ciba to offer its views and comments on the implementation of the Clean Air Act Amendments of 1990.

I'd like to start today with a brief sketch of Ciba. Ciba-Geigy Corporation, headquartered in Ardsley, New York, is a wholly-owned subsidiary of Ciba-Geigy Limited located in Basel, Switzerland. In the U.S., we have over 16,000 employees primarily engaged in the manufacture of health care, agricultural and industrial products.

Our U.S. business represents about one-third of the world-wide Ciba enterprise, and we manufacture in the U.S. over 80 percent of what we sell in the U.S. We have become, like many multi-national companies, increasingly globally integrated in our manufacturing operations, and as part of this global enterprise, we have also become a significant exporter from the U.S. of manufactured goods. World-wide, Ciba is present in 62 countries, employing 90,000 people.

Guiding all of our world-wide operations is an operating philosophy called VISION 2000 which gives equal weight to our economic, social and environmental responsibilities.

To ensure that we are prepared to implement the requirements of the Clean Air Act Amendments, we created a team, referred to as the Ciba Air Force, comprised of twenty air compliance specialists, environmental managers, and environmental lawyers.

This team has been preparing for the implementation of the Clean Air Act Amendments by identifying, quantifying and reducing Ciba's emissions as well as actively monitoring and commenting on Federal and State air implementation regulations. To date, we have invested 30,000 hours of professional staff time in this effort.

Our goal is to be in full compliance with the provisions of the Clean Air Act Amendments which govern our operations and industry. Towards that goal, we have already installed many state-of-the-art controls, such as thermal and catalytic oxidizers, activated carbon adsorption units, and increased condenser efficiency and reformulated product processes.

Ciba's key environmental goal is pollution prevention and source reduction. We seek to move from end-of-pipe controls to more progressive production technologies to prevent waste. Between 1985 and 1992, Ciba invested more than $500 million in environmental protection improvements and remediation in the U.S.

Over the past 5 years we've reduced Toxic Release Inventory (TRI) chemical emissions to the air, land and water by 50 percent. We have a continuing goal to further reduce emissions by 10 percent each future year.

In addition, under the USEPA's voluntary industrial Toxics Project (ITP), Ciba surpassed the agency's milestone of 33 percent reduction of 17 higher-volume chemicals and is moving toward a 50 percent reduction by 1995. These chemicals have been identified by the EPA for special concern because of their high volume of release and potential for exposure.

There is considerable evidence demonstrating a significant improvement in U.S. air quality over the past 2 decades. And the practices implemented during that time period are expected to lead to further reductions even before full implementation of the measures required by the Clean Air Act Amendments of 1990.

For the chemical industry, specifically member companies of the Chemical Manufacturers Association which represents 90 percent of the productive capacity for basic industrial chemicals in the U.S., air emissions covered by the Toxic Release Inventory were cut by 25 percent from 1987 through 1990. Overall emissions, including air, were down by 42 percent for that same time period.

The Clean Air Act Amendments of 1990 are another significant step toward pollution reduction. I support and commend your efforts Mr. Chairman, and the members of this Committee, in your commitment to further improving our environment.

The Clean Air Act Amendments succeeded in bringing previously uncontrolled or grandfathered sources into the regulatory system. The new law requires areas of the country with the worst air pollution problems to adopt innovative, market-based approaches to emission reduction in addition to the typical controls. It also broadens the scope of sources that will be controlled to include mobile, area and stationary sources.

In passing the Clean Air Act Amendments of 1990, Congress also sought to bring about a streamlined and consistent national permitting system to replace the highly variable approach currently used.

Previously, individual States issued operating permits under State implementation plans. These plans and requirements differed dramatically from State to State.

Congress viewed the creation of a national permitting process as a means to streamline the permitting program and to promote more effective attainment of national air quality standards.

Ciba supports these efforts to streamline regulations and attain national air quality standards; however, the implementation of the title V Operating Permit Program by EPA may unfortunately do the opposite. So far, it appears that the program will simply generate an unnecessary bureaucratic logjam making the permit process more time consuming, cumbersome and costly, thereby impeding innovation.

Earlier this year, the General Accounting Office (GAO) reported that resource shortfalls at the EPA contributed to a significant delay in the issuance of the final title V permit rule. Many States were awaiting this rule before drafting their State plans and regulations.

The GAO further indicated that EPA has allocated less staff to implement the Clean Air Act Amendment Title V Permit Program than its water permit program, although the number of estimated air permits is much greater than water permits. The GAO estimates that title V will affect 35,000 major and 350,000 non-major pollution sources. Some pessimists believe it may take years to receive an air operating permit.

Unfortunately, these delays are having a domino-like effect at the State level. States are under extreme pressure to develop programs that meet Federal requirements, but they are trying to do it without extension of time and with fewer resources than the EPA.

Under the law, States have until November of this year to submit permit programs to the EPA. It does not appear that the EPA will grant any extensions of time to the States for submission of their plans. Thus, the regulated community will be hard pressed to come up to speed with State programs and to put their permit applications together. Just like the States, we in industry will not be granted an extension.

The problem stems from simply too many administrative burdens. The operating permit program, in addition to virtually every other Clean Air regulation, focuses on adding layer upon layer of recordkeeping, reporting, monitoring and enforcement.

The goal of the operating permit program was to provide a single document that would assure everyone that all applicable requirements are being met. A source has to monitor and keep records, file reports and certify compliance through the permit program.

However, we are concerned when we see duplicative requirements and compliance certifications in every other regulation that comes out, such as the Enhanced Monitoring and Compliance Certification regulation expected to be published next week.

This regulation will add additional recordkeeping, reporting and monitoring requirements beyond those of existing regulations by requiring that a source perform continuous monitoring. The paperwork requirements of this regulation and the definition of what constitutes a violation will effectively change the way a source determines compliance. Any change beyond the continuously monitored limit would constitute a violation, regardless of its impact on the environment.

Certainly, adequate recordkeeping, reporting and enforcement must be supported to ensure that these important environmental measures have teeth. However, I think we should be generating meaningful data that provides an overall picture of a facility's compliance, not on a minute-by-minute report card that may only generate reams of paper that serve no useful environmental purpose.

An inefficient permitting program and burdensome regulations will cause problems and delays that impact existing and future facilities. This will have a negative effect upon U.S. manufacturing competitiveness.

As Vice President Al Gore recently outlined, the government needs to reduce bureaucracy, to streamline and avoid duplicative efforts, and to focus on results and their customers.

International companies like Ciba look at the globe as their market place, and they must adapt to changing consumer demands.

Ciba weighs many variables when deciding to expand or upgrade existing facilities and where to locate new manufacturing facilities to support world-wide markets.

Ciba is committed to meeting the environmental standards wherever it operates. With regard to the Clean Air Act Amendments of 1990, we were not as concerned about the environmental standards as we were with the regulatory process by which the standards are applied. In siting and designing a new facility, we clearly need to understand what is expected of us and the timeframe in which we can expect decisions to be made.

There are strong positive advantages to siting new manufacturing operations in the U.S. The high quality of the American work force and access to the marketplace are two very important factors for us.

However, in contrast to the U.S. regulatory system, many foreign jurisdictions, particularly in Europe, effectively balance their environmental statutes with efficient and effective permitting and with predictability of outcome for new manufacturing investments.

As an international company, Ciba represents a microcosm of the global economy. In order to be successful, we must anticipate customer demand and gauge our ability to meet that demand. Group companies from different parts of the globe compete for resources necessary to conduct their businesses.

My company colleagues from around the world often point out that the U.S. is concerned about developing very sound environmental policy and standards. However, when we proceed to implement those policies and standards, we construct extremely cumbersome regulatory systems which are so time consuming and complex that the original purpose of the law seems to get lost. This adversely impacts U.S. competitiveness.

One example to illustrate my point would be Ciba's deliberations in 1990 regarding the siting of a new manufacturing facility for stabilizers used in plastics, coatings and automotive finishes. These stabilizers guard against the harmful affects of ultraviolet light that causes fading and product degradation.

This facility needed to be permitted, constructed and operating by 1992 to meet customer demand. Based upon a thorough review of potential sites worldwide, the facility was built in Mexico. The primary concerns about siting the facility in the U.S. were the slow permitting process and the added uncertainty of future Clean Air Act Amendment requirements.

You should understand that Ciba's primary concern was not about stricter requirements but rather the delays and uncertainties that are becoming part of the U.S. environmental regulatory process.

In fact, a joint Ciba team of Swiss and Mexican engineers designed an air pollution control system for this facility that met identical standards for similar facilities operating in Switzerland and was equivalent to its U.S. counterparts operating at that time.

In conclusion, I believe that the U.S. command and control regulatory philosophy must change. I applaud you Mr. Chairman, and members of this Committee for your willingness to explore new and innovative ways to go beyond command and control measures.

We need to adopt the philosophy outlined many times by President Clinton and EPA Administrator Browner. That philosophy recognizes that there is a direct and tangible link between environmental excellence and economic growth.

This requires streamlining and eliminating duplicative requirements. We also need to significantly expand the opportunities for market-based approaches to reducing emissions.

It's not simply about jobs or simply about the environment. It's about jobs and the environment. To prosper as a nation, and to ensure our continued economic growth and international competitiveness, we need to foster a more effective and cooperative working relationship between regulators, the environmental community, the public and business.

We need to move from the old command and control regime to a pollution prevention philosophy which sets goals, encourages innovation in meeting those goals and rewards those attaining and surpassing them.

I heartily agree with Administrator Browner's Pollution Prevention Policy Statement where pollution prevention is made the new environmental ethic, and State, local, private and Federal partnerships are the way of the future.

As Clean Air Act Amendment rules and regulations are developed and implemented, I hope this concept will be remembered. Let's ensure that these rules and regulations achieve our clean air goals without choking U.S. competitiveness and innovation.

I would ask this Committee to challenge the EPA to implement more effective and efficient regulations that are less based on command and control approaches. A more efficient regulatory process will not only yield a cleaner environment but also promote U.S. competitiveness.

Thank You. I'd be happy to answer any questions this Committee may have.

ADDITIONAL QUESTIONS FOR DR. JOSEPH SULLIVAN FROM SENATOR ALAN K. SIMPSON

Question 1. Our laws are based on the "polluter pays" principle. Every year, we've given billions in foreign aid, some for environmental purposes? Should we require that systems built with our money charge the industrial users of these facilities appropriate sewer fees so that our foreign aid is not subsidizing our competitors pollution treatment costs?

Answer. Ciba supports a competitive playing field that is fair to all. At the same time we should ensure that we are not providing incentives to other countries that would place U.S. businesses at an unfair competitive advantage.

Ciba looks to the harmonization of international environmental standards. As an international company, operating in over 62 countries, Ciba is faced with a variety of different environmental laws and requirements.

Ciba worldwide has the same overall policies and objectives for environmental protection. In many developed countries, the law already sets high standards which meet our own objectives. But where legal requirements are less stringent, we apply our own policies and guidelines to the situation.

With regard to user fees for treating wastes, we in the U.S. have seen that these fees can be an effective tool in reducing pollution and encouraging the development of innovative pollution prevention technologies in the United States. By setting a cost for waste treatment, users can be motivated to find means to avoid those end-of-pipe costs through process changes and other pollution prevention technologies.

Question 2. Your firm has a great deal of experience with innovation. Do you have any comments on how regulations and permits can impede development of innovative solutions to environmental problems?

Answer. Command-and-control techniques, which typically focus on end-of-pipe solutions and largely dictates how industry will approach an environmental issue, can impede development of innovative solutions to environmental problems.

Command-and-control does not promote or encourage pollution prevention, because it requires large end-of-pipe expenditures to meet prescribed regulatory standards. Once a company makes that investment and is meeting the applicable standards, it significantly reduces the incentive to install in-process pollution prevention technology.

Ciba's first priority for environmental improvements is through source reduction and pollution prevention rather than end-of-pipe controls. We look for a streamlined regulatory process that effectively achieves its goals without choking U.S. business with burdensome requirements that do not contribute to a cleaner environment.

We need to move to a regulatory process which encourages innovation and environmental excellence. Toward that end, the government, both Congress and the reg-

ulators must focus on setting environmental goals, standards and timetables for compliance. Business should be allowed flexibility, drawing on its well honed capital instincts and technical competence, to develop innovative ways to meet those goals and standards. Government, of course, would monitor performance and exercise its enforcement role as appropriate.

Question 3. Is it fair to say that innovation can give a business a competitive edge? There's a great deal of discussion about helping industry develop innovative manufacturing technologies in the name of environmental protection. If these technologies would give us a technological edge, wouldn't we be risking this edge if we export these technologies to our competitors?

Answer. Yes, innovation can certainly give one business a competitive edge over others. If we structure our regulatory process to encourage environmental protection innovations, we will see greater opportunities created for U.S. businesses.

Export of environmental protection technology and equipment is a growing business for the U.S. According to a report released by the U.S. Environmental Protection Agency in July 1993, the U.S. is a major exporter of environmental protection equipment, enjoying a $1.1 billion surplus of trade in 1991.

Export of U.S. environmental protection technology will only harm our competitiveness if we do not continue to improve existing technology or develop new ones. However, new environmental technologies continue to develop rapidly and create new markets. These new markets continually heighten competitive forces, which in turn, generate new environmental advances.

We should keep in mind that the transfer of environmental protection technologies is often a two way street. As an international corporation we sometimes incorporate environmental protection advances developed by Ciba in other countries into our U.S. operations. Harmonization of international environmental standards would help to ensure that the competitive playing filed is fair for all (See answer to Question 2).

ADDITIONAL QUESTION FOR DR. JOSEPH SULLIVAN FROM SENATOR JOSEPH LIEBERMAN

Question. Besides the Reformulated Gasoline Regulation, what other regulations might be appropriate to approach through regulatory negotiation?

Answer. In my opinion, the regulatory development process would be far more sound if all substantial regulations were based on sound science and developed through a negotiation process that involved all concerned parties. All too often regulations are developed without any input from the "real" world.

Typical regulatory promulgation is a one-way street. Proposed regulations are published for comment in the Federal Register. Comments are submitted by interested parties. After a specified period of time the final regulation is published in the Federal Register along with response to comments. This process does not provide opportunities for a two-way, constructive dialogue.

As I look ahead to see where Congress can help improve environmental programs, I see great potential for improvement in the Superfund program.

Superfund is fundamentally unfair. While we agree with the concept of the polluter pays, the reality under Superfund is that the "survivors" pay their share and more. Survivors not only pay their share, but also those of parties not identified for liability by EPA or those who have since ceased to exist.

Superfund is not working as effectively or efficiently as it could and tremendous resources are being wasted on non-cleanup activities. We must refocus the program to ensure that real environmental risks are addressed, that human health and the environment are protected, and that cleanups are done promptly and in a financially sound manner.

The 1986 Superfund Amendments and Reauthorization Act (SARA) resulted in the promulgation of many new regulations affecting Superfund environmental remediation. Those regulations, promulgated without significant input from affected parties, are the focus of debate today for Superfund reform.

Cited as problematic by nearly all stakeholders in the Superfund reauthorization debate are regulations dealing with cleanup levels, risk assessment, remedy selection and preference for permanence and treatment.

Cumbersome regulatory requirements can actually slow down remediation. In an effort to expedite cleanups, Ciba has offered innovative approaches to the EPA which would obviate the need for cumbersome and painfully detailed work plans and compliance schedules.

At one particular site we asked EPA to simply State its remedial design requirements and completion date and then allow us to devise the means to meet those

requirements. Unfortunately, EPA is not able work in this fashion. Instead they require the creation of a detailed, step-by-step work plan with completion dates and EPA approval required for each step. Failure to comply with each step can result in substantial penalty and fines.

In addition to the submission of the work plan itself, EPA requires the submission of a plan which describes how and when the company will develop and implement the work plan.

These regulatory requirements do not promote restoration of the environment. Congress, in reauthorizing Superfund, should consider legislatively requiring that the regulatory development process involve all stakeholders. I believe that an inclusive process will result in a more effective Superfund program and one that has broad support from all involved parties.

STATEMENT OF SENATOR FRANK H. MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA

ALASKA OXYGENATED FUELS PROGRAM

Mr. Chairman, I thank you for the opportunity to testify today before the Committee on Environment and Public Works and the Environmental Protection Agency (EPA) Administrator Carol Browner to express my continued opposition to the use of methyl tertiary butyl ether (MTBE) in Alaska until the EPA has conducted the necessary cold weather tests. Yesterday I joined my colleague Senator Stevens to support legislation to provide critical relief for the citizens of Alaska by providing a temporary resolution to the oxygenated fuels problem.

As you know, section 211(m) of the Clean Air Act Amendments of 1990 mandates the oxygenated fuels program for all cities that have failed to attain carbon monoxide (CO) air quality standards. Thirty-nine cities have instituted the oxygenated fuels program including two cities In my State, Anchorage and Fairbanks, neither of which had a serious CO non-attainment problem.

In Alaska, we are most prone to exceed CO standards during the winter months—November through March—when temperatures can dip as low as 50 degrees below zero. In 1992, a surge of health complaints accompanied the use of MTBE in fuels. Because the Environmental Protection Agency (EPA) had not conducted the necessary cold weather tests, the EPA was not able to determine whether the use of MTBE was the source of the health complaints. EPA had not studied the possible health risks associated with the use of MTBE in Arctic temperatures or the possibility that the use of MTBE in cold temperatures could lead to increased emissions of air toxins.

Since December 1992, Alaska's Epidemiologist and the U.S. Centers for Disease Control and Prevention (CDC) have done studies in Anchorage and Fairbanks on the use of MTBE in cold weather. The State Epidemiologist has determined that Alaskans should not be subject to oxygenated fuels until further definitive research on the possible correlation between MTBE use in Arctic temperatures and a public health risk are measured. A study conducted by the CDC reinforces the State's concerns.

The research presented thus far indicates that ABE may not reach the desired goal of CO emission reductions and may, in fact, increase emissions of CO and aldehydes at sub-Arctic temperatures.

Too many serious questions remain to go forward with this program in Alaska. The studies done so far have not been conducted with the proper cold weather control factors and have not produced a consensus on the health effects or the effects on CO emissions of MTBE use under Arctic temperatures. For these reasons, I continue to oppose the use of MTBE In the State of Alaska. We have had a good working relationship with the EPA this far and I look forward to continuing to work with the EPA to solve this problem.

ENVIRONMENTAL
DEFENSE FUND

Capital Office
1875 Connecticut Ave., N.W.
Washington, DC 20009
(202) 387-3500
Fax: 202-234-6049

September 22, 1993

Hon. Max Baucus
Chairman
Committee on Environment and
Public Works
U.S. Senate
Washington, D.C.

Dear Senator Baucus,

I am sorry that EDF's executive director Fred Krupp was prevented by a schedule conflict from testifying at the Committee's hearing on Clean Air Act implementation. We would like to offer a few comments on the role of market-based approaches under the Clean Air Act that you may choose to include in the hearing record.

In 1990, under your leadership and that of your Committee colleagues, Congress fashioned a bold, new application for the concept of emissions trading. Under Title IV of the Clean Air Act, utility plants, which are required to reduce their sulfur dioxide emissions by a total of 10 million tons per year, may trade emissions reductions whenever they make more reductions than required. This emissions reduction market rewards those plants that find ways to achieve extra clean-up and allows each utility to find the lowest-cost method for complying with its emissions limitation requirements. As a result, the acid rain program can deliver the maximum amount of emissions reductions for every dollar spent.

EDF is preparing a paper in an attempt to find the best ways of thinking about the success or failure of the acid rain emissions trading program. The paper concludes that Title IV has been designed in a way that builds in a substantial measure of near-inevitable success. Features like the cap on total and individual plant emissions, continuous emissions monitoring and the automatic penalty and offset provisions all but guarantee that the required emissions reductions will be achieved. At the same time, the structure of the trading system promotes investment and innovation in extra clean-up as well

National Headquarters

257 Park Avenue South
New York, NY 10010
(212) 505-2100

5655 College Ave.
Oakland, CA 94618
(510) 658-8008

1405 Arapahoe Ave.
Boulder, CO 80302
(303) 440-4901

128 East Hargett St.
Raleigh, NC 27601
(919) 821-7793

1800 Guadalupe
Austin, TX 78701
(512) 478-5161

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as compliance strategies that minimize cost. From an environmental perspective, the economic incentives of the emissions trading market already seem to be paying off with recent reports that Phase I utilities are set to make more emissions reductions than required in the first five years of the program.

On a political level, as you no doubt recall, the flexibility and cost-savings offered by emissions trading not only enabled Congress to balance a diversity of competing political interests, but also made it immeasurably easier -- and affordable -- for Congress to set required sulfur dioxide emissions reductions at the 10-million-ton, rather than, say, the 8-million-ton, level. In addition, the flexibility afforded utilities in selecting compliance options was equally invaluable in allowing Congress to impose compliance elements of unprecedented rigor and effectiveness in ensuring the environmental performance of the program.

Among the challenges facing both the Environmental Protection Agency and the States is to find a way to tap the power of economic incentives to overcome the threat of ozone smog plaguing our nation's cities. However successful the Clean Air Act has been in curbing outright pollution disasters, the more-than-20-year effort to fight urban ozone has been riddled by a host of setbacks, such as failure of programs to achieve required emissions reductions, continued high, if not increasing, costs and stubborn political resistance. With so many cities compelled to make even deeper emissions reductions in the future in order to attain air quality standards, these problems threaten to become intractable without innovative state implementation plan strategies of the sort that can be fashioned using emissions trading.

Nonattainment areas face the same demands confronting the Congress when it set about tackling the national acid rain problem. In the face of continued economic change and growth, merely prescribing emissions rates or control technologies or other abatement strategies is unlikely to produce and maintain the absolute reductions in emissions of oxides of nitrogen and volatile organic compounds necessary to block ozone-formation. Political resistance and bureaucratic "negotiating" that so often characterize the formulation of SIP's and individual source abatement requirements also tend to cripple the environmental performance of local air quality attainment plans. At the same time, this process is not notoriously effective at promoting the kind of innovations needed both to speed attainment and lower cost.

With its cap on actual emissions and its rigorous compliance structure along with the innovation-stimulating and cost-saving benefits of emissions trading, in addition to its apparent ability to prompt sources to make reductions earlier than required, the Title IV SO2 program should provide a template for designing groundlevel ozone attainment strategies. In fact, EDF

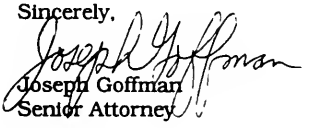
has been working with the Illinois Environmental Protection Agency on a small design team that has been exploring precisely the possibility of using Title IV as a template for reducing NOx emissions in major nonattainment areas. Though many of the details remain to be worked out, we have been successful so far in mapping out a program that caps total NOx emissions at a low enough level to blunt unacceptable amounts of ozone formation while imposing actual tonnage-based emissions limits on individual stationary sources that in turn can engage in emissions trading whenever a source achieves more reductions than required.

In the course of this exercise we have discovered that the flexibility and cost-savings associated with emissions trading directly facilitate both setting NOx emissions limits at the low levels that are needed and imposing rigorous compliance requirements on sources that must make actual emissions reductions. With the possibility of at least limited banking and the likelihood that emissions reduction "banks" will always have unspent accounts reflecting accelerated reductions, we also have discovered that emissions trading holds the promise of "pushing the envelope" of what is considered "as expeditious as practicable" in attaining air quality standards.

What is needed now for these and similar efforts to go forward is a clear signal of encouragement from the EPA to the States that SIP's that can link emissions trading to levels of environmental performance that have rarely been attained in the past will be fully supported by the Agency. Without this, we may doomed to another generation of inferior air quality implementation strategies that in turn doom another generation of Americans to dirty urban air.

Thank you for your consideration in this matter.

Sincerely,



Joseph Goffman
Senior Attorney

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cc. Hon. Joseph Lieberman
Chairman
Subcommittee on Clean Air and Nuclear Regulation

Hon. Carol Browner
Administrator
U.S. Environmental Protection Agency

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